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Costa Rica-Panama Arbitration

OPINION

CONCERNING THE QUESTION OF BOUNDARIES

Between

THE REPUBLICS OF COSTA RICA AND PANAMA

Examined with Respect to the Spanish Law and Given at the
Request of the Government of Costa Rica by
their Excellencies,

DON SEGISMUNDO MORET Y PRENDERGAST

Ex-President of the Cabinet Council, Ex-President of the Congress of Deputies,
Deputy to the Cortes, Ex-President of the Central University,
Member of the Permanent Court of Arbitra-
tion of the Hague,

and

DON VICENTE SANTAMARIA DE PAREDES

Professor of Public Law in the Central University, Ex-Minister of Public Instruc-
tion, Senator of the Kingdom, President of the Council of Public
Instruction, Member of the Royal Academies of Moral
and Political Sciences and of History
President of the Technical Commission in the Arbitration Between the Republics
of Honduras and Nicaragua, Decided by
H. M. the King of Spain.

PRINTERS:

THE COMMONWEALTH COMPANY,

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1913

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The documents to which parenthetical reference is made herein are to be found in "Documents Annexed to the Argument of Costa Rica Before the Arbitrator, Hon. Edward Douglass White," etc., in four volumes.

INTRODUCTION.

I. The Arbitration of the Boundary Question Pending Between the Republics of Costa Rica and Panama.

On the 15th of March, 1825, the Republic of Colombia (whose rights are now claimed by that of Panama) and the federated Republic of Central America (of which that of Costa Rica formed a part) entered into a treaty by which, in article 5, the parties mutually guaranteed the integrity of their respective territories "as they existed prior to the present war of independence," and, in article 7, they obligated themselves "to respect the boundaries of each other as they now exist," reserving to themselves the duty to make amicably and by means of a special agreement, the demarcation of a divisionary line as soon as circumstances might permit (Doc. No. 257).

On the dissolution of that federation, the Republic of Costa Rica and that of Colombia undertook at various times to establish that divisionary line, preparing agreements which were never ratified and passing through serious conflicts in consequence of their different conceptions as to the extent of their territorial sovereignty.

With the laudable purpose of putting an end amicably to their differences, they entered into an agreement on December 25, 1880, submitting to arbitration "the question of limits existing between them and the designation of a line that shall separate for all time and with entire clearness the territory of the one from the other." By virtue of this agreement, the arbitra-

tion was entrusted to His Majesty, the King of Spain, at that time Don Alfonso XII (Doc. No. 364).

On the death of that Monarch, Costa Rica and Colombia, on January 20, 1886, entered into another convention, "additional" to that of 1880, in Article 1 of which the Government of Spain is declared to be "competent to proceed with the execution of the arbitration and to deliver a definitive sentence of an irrevocable and unappealable character" (Doc. No. 369).

In Article 2 of this additional convention the extent of the disputed territory was determined, and the claims of the parties litigant were set forth as follows:

"The territorial limit which the Republic of *Costa Rica* claims, on the Atlantic side, reaches as far as the Island of the Escudo de Veragua and the River Chiriquí (Calobebora) inclusive, and, on the Pacific side, as far as the River Chiriquí Viejo, inclusive, to the east of Punta Burica.

"The territorial limit which the United States of *Colombia* claims reaches, on the Atlantic side, as far as Cape Gracias á Dios, inclusive, and, on the Pacific side, as far as the mouth of the Golfito River in the Gulf of Dulce."

In Article 3, it is stated that the arbitral decision should be confined to the *territory in dispute* situated within these extreme limits, and should not affect in any way the rights of a third party who may not have intervened in the arbitration.

New dissensions between Costa Rica and Colombia and their persistent desire for a friendly settlement, led to a third convention, signed November 4th, 1896, by which the arbitration was offered in the first place to the President of the Republic of France, but it was given

to be understood that the failure to designate the Government of Spain as arbitrator was due solely to Colombia's reluctance to exact from that Government so much continuous service, she having only shortly before then subscribed with Ecuador and Peru a boundary treaty in which His Catholic Majesty was named as arbitrator, and this after his laborious trial of the question of the Colombian-Venezuelan frontier (Doc. No. 403).

In this third convention the two prior ones of 1880 and 1886 were ratified and held to be in force, except Articles 2 to 6 of the former, and 1 and 4 of the latter. So that there remained in force: Article 1 of the Convention of 1880, stating the question of limits, and Articles 2 and 3 relating to the boundaries claimed by each of the parties, and the condition that the arbitrator be confined to the *territory in dispute*.

The arbitral proceedings having been submitted to the President of the Republic of France, His Excellency Monsieur Loubet, who was then in charge of that very high office, handed down his decision on September 11th, 1900 (Doc. Nos. 413 and 414), establishing as a divisionary line that which he traced from Punta Mona on the Atlantic Ocean to Punta Burica on the Pacific Ocean. The award of Monsieur Loubet sets forth none of the reasoning on which it is based; only the bare decision is given, prefaced by a list of memoranda, documents and maps presented by each party, and an enumeration of the Royal acts cited by both.

The Government of Costa Rica made respectful observations to that of France, in regard to the difficulties of carrying out the Award; and the Minister of Foreign Affairs, Monsieur Deleassé, in his note of

November 23, 1900 (Doc. Nos. 421 and 422), addressed to the Minister of Costa Rica in Paris, answered saying:

“For lack of precise geographical data, the Arbitrator has not been able to fix the frontier except by means of general indications; I deem, therefore, that it would be inconvenient to trace them upon a map. But there is no doubt, as you have observed, that in conformity with the terms of Articles 2 and 3 of the Convention of Paris of January 20, 1886, *this frontier line must be traced within the limits of the territory in dispute*, as they are found to be from the text of said Articles. It is according to these principles that the Republics of Colombia and Costa Rica *will have to proceed* in the material determination of their frontiers; and the Arbitrator relies, in this particular, upon the spirit of conciliation and good understanding which has up to this time inspired the two interested Governments.”

The Government of Costa Rica understood that the decision did not meet all the conditions stipulated in the arbitration agreement, since it did not establish the divisionary line for all time and with entire clearness; it even went outside the limits of the disputed territory, and left open the field of controversy. In its desire to settle the question of boundaries definitively and as soon as possible, that government sought and in December, 1907, obtained (Doc. Nos. 440 and 442) the friendly mediation of the United States; there was excellent reason for this choice inasmuch as the latter had been constituted by the Treaty of November 3, 1903, guarantor of the independence of the new Republic of Panama.

The result of these negotiations was the Convention of March 17, 1910 (Doc. No. 473), between the Republics of Costa Rica and Panama, submitting the definitive settlement of the matter to the *Chief Justice* of the United States, in the following form:

“The Republic of Costa Rica and the Republic of Panama, although they consider that the boundary between their respective territories designated by the arbitral sentence of His Excellency, the President of the Republic of France, of the 11th of September, 1900, is clear and indisputable in the region of the Pacific, from Punta Burica to a point beyond Cerro Pando in the Central Cordillera near the ninth degree of North Latitude, have not been able to reach an agreement in respect to the interpretation to be given to the Arbitral Award as to the rest of the boundary line; and for the purpose of settling their said disagreements agree to submit to the decision of the Honorable Chief Justice of the United States, who will determine in the capacity of Arbitrator: What is the boundary under and most in accordance with the correct interpretation and true intention of the Award of the President of the Republic of France made the 11th of September, 1900.”

The convention immediately adds:

“In order to decide this, the Arbitrator will take into account all the facts, circumstances and considerations which may have a bearing upon the case, as well as the limitation of the Loubet Award, expressed in the letter of His Excellency, M. Delcassé, Minister of Foreign Affairs of France, to His Excellency, Señor Peralta, Minister of Costa Rica in Paris, of

November 23, 1900, that this boundary line must be drawn within the confines of the territory in dispute as determined by the Convention of Paris between the Republic of Costa Rica and the Republic of Colombia of January 20, 1886."

II. Object and Plan of This Opinion.

This matter being under submission before the Honorable Chief Justice of the United States, the Government of Costa Rica has been pleased to engage the undersigned counsel to examine all the antecedents of the case, the allegations of the Parties litigant, and the laws and Royal acts invoked, and to give an opinion in regard to the *boundary question between the Republics of Costa Rica and Panama, as affected by the Spanish colonial law*.

In order to fulfill the duty with which it has honored us, we have carefully examined all the data relating to the question, and after mature reflection, have prepared the present opinion.

We will not go beyond the sphere of *Spanish colonial law*, as to which we are consulted, and we wish to state that we adopt this denomination, not because it has been used in Spain—who called her territories of the Indies kingdoms and provinces, instead of colonies—but for greater clearness and in contradistinction to *international law*, into which we shall not intrude.

What may be the efficacy of the decision of Monsieur Loubet under international law, and what the value of the *intercolonial* boundaries in fixing the international lines between two adjoining provinces dependent upon the same mother country and now converted into sovereign States, are questions foreign to our examination.

But we do contend that to determine the question of the boundaries between Costa Rica and Panama according to Spanish colonial law is equivalent to deciding it under international law, because that law has been fundamentally the basis of the boundary settlements of the Spanish-American republics, because the entire discussion in the present litigation turns upon that law solely, and because the "true intent of the Award" of Monsieur Loubet was to sustain that system of laws.

Although, as we have indicated, this *Award* contains no reasoning whatever, it clearly appears that the Arbitrator did not have any other intention, since it refers only to the laws, Royal cédulas and Royal orders of the colonial epoch which it cites in detail in the preamble, save the Treaty of 1825, between the Republics of Central America and Colombia, which recognized as boundaries those then existing; that is to say, the intercolonial boundaries.

And since, according to the Convention of 1910, the Chief Justice must take into account all the facts, circumstances and considerations of the case, and since the case involves the legality of the demarcations of Costa Rica and Panama according to Spanish colonial law, we will have to set forth all those facts, circumstances and considerations arising during the period of the sovereignty of Spain inasmuch as they contribute to clear up the matter.

The question of boundaries being placed, therefore, in the field of Spanish colonial law, we divide this opinion into *three parts*, comprising the three propositions following:

1. The Province of Costa Rica and that of Veragua

were definitively established and marked out by the Crown in the Sixteenth century (1573).

2. *The Recopilación de Indias* (Compilation of the Laws of the Indies) respected and confirmed the existence and demarcation of Costa Rica.

3. Costa Rica continued in the same legal status of differentiation from Veragua, from the publication of the *Recopilación* down to the independence.

Under these three heads we shall group the different controverted questions, developing our opinion thereon as we proceed.

FIRST PART

**The Provinces of Costa Rica and Veragua Were
Definitively Established and Bounded by the Crown
in the XVIth Century (1573).**

SUMMARY.

I. Necessity for Studying the Formation of the Provinces of Veragua and Costa Rica.

1. The "Veragua" Equivoque as the Premise of the Principal Argument of Colombia.
2. The History of the Formation of the Provinces of Veragua and Costa Rica Clears Up the Equivoque and Clearly Demonstrates How They Were Recognized and Differentiated in the XVIth Century.

II. The Primitive Veragua (1502 to 1537).

1. The Veragua of Christopher Columbus (1502).
2. The Veragua of Nicuesa (1508).
3. The Veragua Bordering on the Castilla del Oro of Pedrarias Dávila (1513 to 1527).
4. The Veragua of Felipe Gutiérrez (1534).

III. Province of Veragua.

1. Creation of the Dukedom of Veragua; Royal Cédulas of 1537.

2. Limits of this Dukedom.
3. Suppression of the Ducal Seignory (1556).
4. Organization of the Province of Veragua with a Governor Captain-General.

IV. Province of Costa Rica.

1. Royal Veragua; Province of Costa Rica; Government of Sánchez de Badajoz (1539).
2. Province of Cartago; Government of Diego Gutiérrez (1540).
3. Province of New Cartago or Costa Rica, From the Birth of the Province of Veragua (1560):
 - (a) Differentiation of the Two Veraguas, After the Suppression of the Ducal Seignory;
 - (b) Ortiz de Elgueta (1559);
 - (c) Juan de Cavallón (1560);
 - (d) Denial of the Request of the Governor of Tierra Firme, Figuerola (1561);
 - (e) Vázquez de Coronado (1562);
 - (f) Perafán de Ribera (1566).
4. The Province of Costa Rica Definitively Organized; Government of Artieda (1573);
 - (a) Royal Cédula of Philip II of December 1, 1573;
 - (b) Formation of the Province of Teguzgalpa by the Segregation of That of Costa Rica, Prior to 1573;
 - (c) Boundaries With the Province of Veragua.

V. The Question of Boundaries Settled by the Royal Cédula of 1573 and Not by That of 1537.

1. Importance, Confirmations and Subsistence of the Royal Cédula of 1573.
2. Inefficacy and Abrogation of the Royal Cédula of 1537.

NECESSITY FOR STUDYING THE FORMATION OF THE PROVINCES OF VERAGUA AND COSTA RICA.

1. The "Veragua" Equivoque as the Premise of the Principal Argument of Colombia.

The question of boundaries pending between the Republics of Costa Rica and of Panama (the successor to that of Colombia) refers to the territory which was called "Veragua"; out of this was formed the Province of Costa Rica, which is now the Republic of that name, and the Province of Veragua, which belonged to the Republic of Colombia and now belongs to Panama.

Placing this question of boundaries within the sphere of Spanish colonial law, we find that it was settled in the XVIth century by the formation of these two provinces, and more specifically by the Royal cédula of December 1, 1573 (Doc. No. 62), which established forever the differentiation between them. And if it is always useful to know how any political entities which litigate their geographical boundaries were formed, it becomes indispensable in the present case, inasmuch as Colombia has enlarged her claims to the extent of denying the very existence of Costa Rica as a Spanish province, and has asked as her limits those with which Costa Rica ends on the side opposite to the Colombian borders, in order clearly to get from the Arbitrator the greatest extension possible, although it could not be expected that the arbitration would result in the suppression of the adverse international personality.

The ancient Veragua passed through various phases in its historico-legal evolution, until its name became concentered into one of the three provinces that arose out of it; Colombia makes use of the "equivoque" to which the variety of the applications of the name gives rise, and founds thereon her argument.

All of Colombia's counsel employ, as their principal argument, the one which may be formulated in the following syllogism: Law 9, title 1, book V, of the *Recopilación de Indias* (Doc. No. 135), with reference to the Royal cédula of Carlos V of March 2, 1537 (Doc. No. 13), says that "the whole Province of Veragua belongs to the Government of Tierra Firme"; therefore it is that since to Colombia belongs that which was under the Government of Tierra Firme, it follows that all of the Province of Veragua belongs to her. And as the Veragua of 1537 comprised all of the territory included between Castilla del Oro and Cape Gracias á Dios, and as within that territory was included that which Costa Rica now holds, the latter should have it, as also that which extends from the Desaguadero, or River San Juan (the boundary of Costa Rica with Nicaragua) as far as Cape Gracias á Dios.

Dou Francisco Silvela, who signed the first "Memorandum of Colombia," asserts that according to the Royal cédula of March 2, 1537, Veragua comprised from Castilla del Oro as far as Cape Gracias á Dios, but as the litigation was only with Costa Rica—which went no farther than the River San Juan—the river should be the northern limit on the Atlantic (p. 61).

Monsieur Poincaré says the same in the second and third "Memorandum of Colombia," declaring in the latter, in capital letters, "*let the whole Province of Veragua belong to the Government of Tierra Firme*";

this being the decisive phrase, which solemnly expresses, in his judgment, the thought of the Spanish Monarch (p. 2). In the "Summary (*résumé*) of the Conclusions of Colombia," also presented to the Arbitrator by Monsieur Poincaré, he condenses the argument as follows:

"The whole of the Province of Veragua depended from the Audiencia of Panama and this Audiencia was swallowed up in the Viceroyalty of Santa Fé. Colombia is unquestionably the successor to the right of the Government of Tierra Firme, of the Audiencia of Panama and the Viceroyalty of Santa Fé. All of the Province of Veragua ought, therefore, to belong to Colombia. Since its origin the Province of Veragua has extended as far as Cape *Gracias á Dios*. (See the Royal cédula of March 2, 1537.) It has never been divided."

2. The History of the Formation of the Province of Veragua and Costa Rica Clears Up the Equivoque and Clearly Demonstrates How They Were Recognized and Differentiated in the XVIth Century.

History clears up the equivoque upon which Colombia bases her argument, for it shows the different significations which the denomination of "Veragua" had until it came to be applied solely to one determined province.

This investigation of the formation of the Province of Veragua and Costa Rica has, besides its historical interest, the immense importance of clearly demonstrating how the question, which is now being tried between Costa Rica and Panama, was settled in the XVIth century by the Spanish colonial law—not by virtue of the Royal cédula of 1537, but of the Royal

cédulas of December 1, 1573 (Doc. No. 62), and February 18, 1574 (Doc. No. 63).

We think that Colombia's counsel, by taking as a point of departure the *Recopilación de Indias*, have obscured the controversy; they have mixed legal considerations deduced from its texts with historical assertions difficult of comprehension in connection with those texts, without previously taking up the history of the formation of those provinces, as was done by counsel for Costa Rica in his first Memorandum. It seems to us better to explain and discuss first the acts and legal dispositions that preceded the *Recopilación*, and then, afterwards, to examine the *Recopilación*, and, taking its laws altogether, apply them to the facts and prior dispositions which are already known, without having to interrupt the doctrinal demonstration with historical digressions appropriate to the preceding epoch.

For greater clearness, also, we divide the historico-legal examination of the epoch prior to the *Recopilación* into three sections, which cover respectively: (1) that which we call *primitive Veragua*, that is, from the discovery by Columbus, in 1502, down to its division into Ducal Veragua and Royal Veragua, in 1537; (2) the *Province of Veragua*, and (3) the *Province of Costa Rica*. Within each section we follow the chronological method, which, thus combined with the geographical division, obviates the confusion that results when, by observing the former exclusively and keeping the order of the dates, different facts relating to distinct provinces, are mingled. From all this examination we shall deduce, at last, that the question of boundaries was settled by the Royal cédula of 1573, and not by that of 1537.



THE PRIMITIVE VERAGUA (1502 TO 1537).

1. The Veragua of Christopher Columbus (1502).

For many years the territories of Central America lying along the coast of the Atlantic, from Cape Honduras as far as the port of Retrete (now the port of Escribanos) near Cape San Blas, and which Christopher Columbus discovered in his fourth and last voyage of 1502, were known by the name of "*Veragua*."

Strictly speaking this name belonged only to a hamlet and a small surrounding territory. Columbus relates, in his letter from Jamaica, of July 7, 1503, to the Catholic Sovereigns (Doc. No. 1), in which he gives an account of this voyage, that two Indians took him to Carambarú (Zorobaró), where the people went naked, with but a mirror of gold at the neck, telling him of many places on the coast in which gold was to be found; "the farthest," he said, "was *Veragua*, distant from there about 25 leagues." And in describing in detail the same voyage, Diego de Porras explains how Columbus, entering by the river he called Belén, "in the territory of *Veragua*," proved the existence of the mines. So Columbus understood that *Veragua* was situated 25 leagues to the east of Zorobaró and extended to the River Belén.

The great fame acquired by this territory of *Veragua*—in which Columbus stated that in the first two days he had seen greater signs of gold than in *Española* (the Island of Hispaniola, or Hayti) during four years—caused its discovery to be considered as the most important of that fourth voyage, and the

name "Veragua" was applied to all that was discovered there, from Cape Honduras as far as the Cape of San Blas.

2. The Veragua of Nicuesa (1508).

When Columbus returned to Spain he claimed from the Catholic Sovereigns the fulfillment of the promises made to him, especially as to the seignory of the territory of Veragua, which was the one that he held in the greatest esteem. But he did not have the support of Queen Isabella, who had died, and the Catholic King did not admit his claims, considering them excessive and dangerous to the Royal sovereignty. The Admiral having died without succeeding in his desires, Don Diego Columbus, his son and heir, instituted a suit, in 1508, against the Crown, which was in great part settled by the creation of the Dukedom of Veragua, in 1536.

By the Royal cédula of Doña Juana, of June 9, 1508 (Doc. No. 2), the Government of Veragua was granted to Diego de Nicuesa; therein he was given besides the military command, "full power and jurisdiction, civil and criminal," although restricted by the right of appeal to the Governor of the Island of Española. In this Royal cédula the extremity of Veragua was clearly fixed on the side of Tierra Firme, in the Gulf of Urabá, and it was provided further that the part of Urabá is that granted to Alonso de Ojeda; but there is no indication where the Government of Veragua which was granted to Nicuesa, terminated on the west and north.

Fray Bartolomé de las Casas and other historians of the Indies (like Herrera and Navarrete) say that the Veragua of Nicuesa extended from the Gulf of



THE VERAGUA OF NICUESA

ACCORDING TO THE ROYAL Cedula OF JUNE 9, '508

AND THE HISTORIANS

FERNANDEZ DE OVIEDO AND LAS CASAS

Urabá as far as Cape Gracias á Dios. Fernández de Oviedo asserts that it was from the same Gulf of Urabá "as far as the end of the territory called Veragua." Señor Peralta observes very properly, that the only data which the Catholic King had before him on which to base the grant of the Government of Veragua, were the courses and indications of Columbus, and if these be ignored, there is just as much reason to conjecture that it extended to Cape Gracias á Dios as that it extended to Cape Honduras, or any other point in the voyage of the Great Discoverer. This strengthens the extension that was given to the name of Veragua.

Nicuesa did not succeed in founding anything in the territory which was allotted to him; he stayed only in the Veragua of the Belén river and in the Island of the Escudo of Veragua (or Nicuesa), and there endured many misfortunes, disappearing, in 1511, in a shipwreck.

Vasco Núñez de Balboa, who had founded the colony of Santa María del Darién, within the jurisdiction of Nicuesa on the western coast of the Gulf of Urabá, in a letter of January 20, 1513 (Doc. No. 3), giving an account to the King of the progress of that colony, asked that he might be allowed to bring back some Indians "*of the part of Veragua* from a gulf called San Blas, which lies at a distance of 50 leagues from this town down the coast." So that according to Núñez de Balboa, Veragua did not terminate on its eastern side at the Belén river, but included also the territories of the Gulf of San Blas.

Vasco Núñez de Balboa discovered the South Sea (Pacific) on September 25, 1513.

3. The Veragua Bordering on the Castilla del Oro of Pedrarias Dávila (1513 to 1527).

By the Royal cédula of July 27, 1513 (Doc. No. 4), Pedrarias Dávila was appointed Captain-General and Governor of the Province of *Castilla del Oro* (the first time that this denomination was applied to Tierra Firme) "so long as it does not include nor have embraced within it the Province of Veragua, the administration of which belongs to the Admiral Don Diego Columbus, because the Admiral, his father, discovered it in person." The Province of Castilla del Oro was, therefore, differentiated from the "Province of Veragua," which was thus denominated before the creation of the dukedom of the same name; but the boundaries between the two were not fixed.

Gonzalo Fernández de Oviedo, the official historian of the Indies, who intervened in the conquest of Tierra Firme and Nicaragua, says that "Castilla del Oro on the North Coast reaches as far as Veragua, with which the Punta de Chame corresponds more or less on the South Coast, fifteen leagues to the West from Panama."

This limit agrees with that of the jurisdiction of the city of Panama, fixed by the Royal cédula of 1521 (Doc. No. 5), wherein it is stated that it reaches "as far as the Province of Chirú," which is situated a short distance from the Punta de Chame.

According to this, the Province of Veragua, bordering on Castilla del Oro, did not terminate on the east at the Belén river, but extended as far as the said Punta de Chame.

Pedrarias Dávila governed Castilla del Oro until 1527, when he left to become Governor of Nicaragua.

4. The Veragua of Felipe Gutiérrez (1534).

Whilst the suit instituted by Don Diego Columbus was still pending, but with the declaration made in his favor by the Crown respecting Veragua (excluding it from the Government of Castilla del Oro), the widow, Doña María de Toledo, as guardian of his children and Vicereine of the Indies, determined to grant the Government of Veragua to Felipe Gutiérrez, and applied to the Council of the Indies for the issuance to him of the requisite Royal *provisiones*. But in accord with the Council, the King Don Carlos preferred to grant the concession directly to Felipe Gutiérrez; this he did by the *capitulación* approved by the Royal cédula of December 24, 1534 (Doc. No. 8), and at the same time, by another Royal cédula, of the same date (Doc. No. 6), he declared that this "is understood to be without prejudice to any right that the said Admiral Don Luis Columbus claims to have to the said government by virtue of his privileges." In the Royal cédula of February 6, 1535 (Doc. No. 9), the title of Governor of Veragua was conferred upon Felipe Gutiérrez with all that pertained thereto.

Both in the Royal cédula of *capitulación*, as well as in the title the text reads:

"*The Province of Veragua, which is on the coast of Tierra Firme of our Indies of the Ocean Sea, whence terminate the boundaries of the Government of Castilla del Oro, called Tierra Firme, and which were designated to Pedrarias Dávila and Pedro de los Ríos, who were our Governors of the said province under the Provisiones which were given to them, as far as the Cape Gracias á Dios.*"

Felipe Gutiérrez as Governor of Veragua, having presented a complaint against the Governor of Tierra Firme, because the latter had invaded his territory, the Royal cédula of July 14, 1536 (Doc. No. 10), was issued, directing the latter not to enter within the limits of the Province of Urraca, as it fell within that of Veragua. The territories of Urraca were contiguous to Natá and occupied the heights which divided the waters of the north and the south; so that by this Royal cédula the eastern boundaries of the Province of Veragua were concretely defined.

Almost at the same time Felipe Gutiérrez abandoned his charge and set out for Peru, having failed in his undertaking and being unable to support so many misfortunes.

III.

PROVINCE OF VERAGUA.

1. Creation of the Dukedom of Veragua; Royal Cédulas of 1537.

The long suit based upon the claims of Christopher Columbus, which his son Don Diego began in 1508 and which was continued by the widow of the latter, Doña María de Toledo—for herself and in the name of her first born, Don Luis, and other children—was decided by the arbitral decision of July 7, 1536¹; this decision was delivered by the Cardinal Fray García de Loaysa, Bishop of Sigüenza, Confessor of the Emperor and President of the Council of the Indies, who was appointed arbitrator by mutual agreement between the Vicereine and the Crown.

¹ Document published by Fernández Duro, *Colón y Pinzón*.

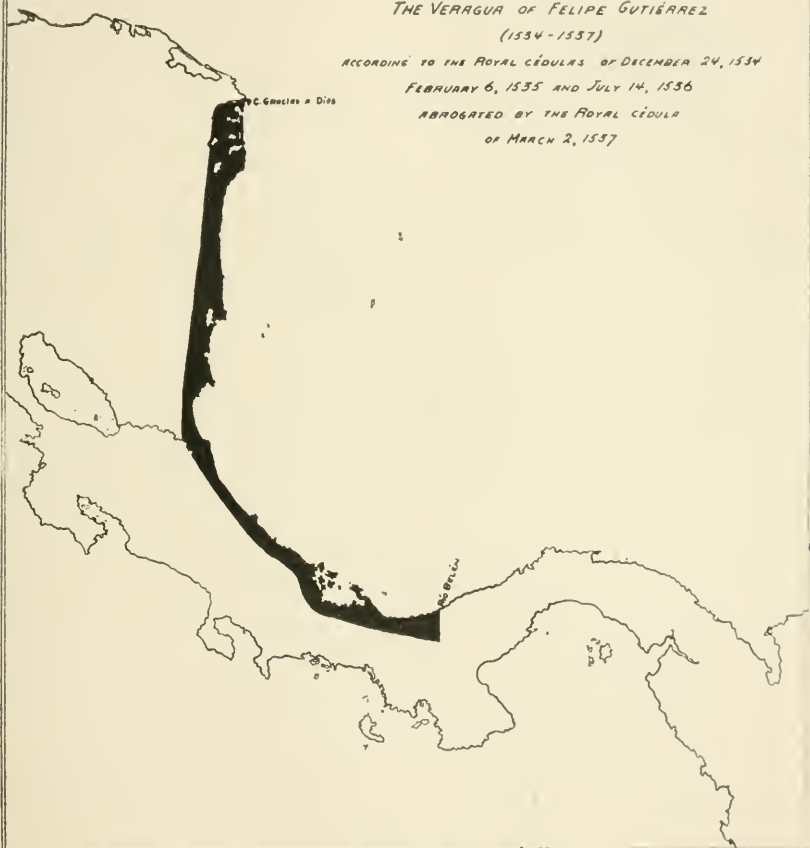
*THE VERRAGUA OF FELIPE GUTIÉRREZ
(1534-1537)*

ACCORDING TO THE ROYAL CÉDULAS OF DECEMBER 24, 1534

FEBRUARY 6, 1535 AND JULY 14, 1536

*ABROGATED BY THE ROYAL CÉDULA
OF MARCH 2, 1537*

C. Gutiérrez a Dña



Carlos V, in his Royal cédula of January 19, 1537 (Doc. No. 12), states how both parties entrusted the settlement to the Cardinal in order that he might "determine and arbitrate therein as he shall deem best, taking from one party and giving to the other, accordingly as may appear to him proper;" he confirms the Cardinal's decision and, in pursuance thereof creates the Dukedom of Veragua in favor of Don Luis Columbus and his successors, making a grant to him and to his house and estate of "twenty-five leagues of land in a square in the Province of Veragua which is in Tierra Firme, with its civil and criminal jurisdiction, high and low, simple, mixed imperial, leaving the supreme to His Majesty."

The creation of the Dukedom of Veragua which segregated a square of twenty-five leagues on each side of the territory known under the name of Veragua and the government of which had been granted to Felipe Gutiérrez, compelled provision to be made in regard to the legal and the governmental situation in which that territory was left, especially since, at the end of 1536, the desertion of that governor had become known in Spain. This led to the Royal cédula of March 2, 1537 (Doc. No. 13), in which the Emperor revoked the *capitulación* and government of Felipe Gutiérrez, reproduced the disposition concerning the creation of the dukedom and directed that the territories left in the said Province of Veragua, after taking out the twenty-five leagues given to Don Luis Columbus, be understood to belong to the Government of the Province of Tierra Firme, called Castilla del Oro, "during our will and pleasure."

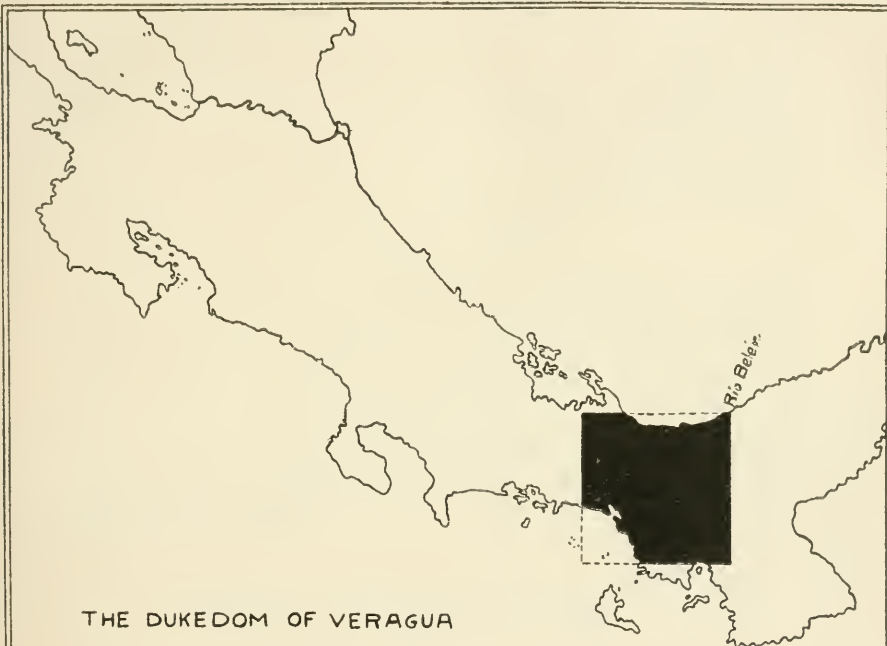
By virtue of this Royal cédula, upon which counsel for Colombia mainly rely in defense of her rights, the

territory of the ancient Veragua granted to Felipe Gutiérrez was divided into two parts, which, in order to distinguish them, are designated in the present controversy *Ducal Veragua* and *Royal Veragua*, referring respectively to that which constituted the Dukedom of Veragua and to that which was reserved by the Crown for its free disposal.

2. Limits of This Dukedom.

In this Royal cédula of March 2, 1537, as well as in the earlier one of January 19th, the boundaries of the Dukedom of Veragua were fixed in the following manner:

“ * * * a square of land twenty-five leagues, in the said Province of Veragua * * * and they begin from the *River Belén*, inclusive, counting by a parallel, as far as the western part of the *Bay of Zorobaró*; and all the leagues that may be lacking for the said twenty-five leagues, shall be counted forward from the said bay by the said parallel; and where these twenty-five leagues terminate, another twenty-five shall begin by a North-South meridian; and as many others begin from the said River Belén by the said meridian of the said river, North-South; and where these said twenty-five leagues shall end, there shall begin another twenty-five leagues, which shall continue, counting by a parallel, until they end where the twenty-five leagues terminate that are counted proceeding forward from the Bay of Zorobaró; which territory we have commanded to be called the Bay of Zorobaró, and with it we direct to be given him the title of Duke * * * ”



THE DUKEDOM OF VERAGUA
ACCORDING TO THE ROYAL CÉDULA
OF JANUARY 19, 1537

As may be seen, the demarcation is mathematical; the grant forms a perfect quadrangle, which has one side definitely determined by the meridian corresponding to the Belén river, included therein. It should be noted that Zorobaró and the Belén river were for Christopher Columbus the indicatory points of the Veragua discovered and coveted by him under this name; and it appears that between the meridian of the Belén river and the Province of Castilla del Oro, which the prior demarcations refer to as bordering on the Province of Veragua, there were lands which were not included in the Dukedom of Veragua.

These facts must be taken into consideration when the time comes to interpret the *Recopilación de Indias* in its relation to the Royal cédula of March 2, 1537; and without concerning ourselves now with the territory of the Royal Veragua left on either side of the twenty-five leagues of the dukedom, let us see how the latter was converted into the Province of Veragua properly so-called.

3. Suppression of the Ducal Seignory (1556).

Don Luis Columbus was not fortunate in the conquest and government of the dukedom which was exercised and carried on by governors and captains appointed by him, and after the disaster in which his brother Francisco perished and the failure of Rebolledo, he made a cession to the Crown of the territories and seignory of the Dukedom of Veragua, in consideration of an annual pension of seven thousand ducats, but the title he retained, as he stipulated with the Council of the Indies in writing on July 4, 1556, which stipulation the King approved and directed to be car-

ried out by the Royal *cédula* of December 2 of the same year (Doc. No. 31).

The territory of the suppressed dukedom was left added to the Government of the Province of Tierra Firme, called Castilla del Oro, it not being true that it was placed under the jurisdiction of the city of *Natá*, as counsel for Colombia assert. The fact is that, by the Royal *cédula* of January 21, 1557 (Doc. No. 32), the Governor of Tierra Firme was authorized to permit the inhabitants of *Natá* to settle the territory of the dukedom as they had asked permission to do.

The inhabitants of *Natá* organized an expedition under the command of Francisco Vázquez, who was commissioned by the Governor of Tierra Firme, and who, in May, 1558, entered the territory of Urraca, founded some settlements and discovered some mines.

The Governor of Tierra Firme, Monjaraz, learning of this, wanted to make the conquest himself, and set out for *Natá*; but Vázquez hastened to make a complaint to the Audiencia of Peru (Doc. No. 33) and with his men resisted the entry of Monjaraz, defeating him on the banks of the *Gatú* river, the boundary of the Dukedom of Veragua on the side of *Natá*.

4. Organization of the Province of Veragua With a Governor Captain-General (1560).

In view of the complaint instituted by Francisco Vázquez the Audiencia of Peru, by Royal *provisión* of May 20, 1559 (Doc. 33), appointed Bernardino de Román to take up the matter and arrange its settlement. Bernardino de Román was informed of all that

had happened and then made a long report to the King, giving an opinion very favorable to Vázquez.¹

Philip II put an end to the question by the Royal cédula of August 20, 1560 (Doc. No. 40), instituting the Province of Veragua with a Governor Captain-General and appointing for this post Francisco Vázquez, to whom he granted all the attributes necessary for the good government and administration of justice in that province.

The boundaries of the new Government were not fixed; but there can be no doubt that it had for its territory that of the suppressed dukedom, according to the antecedents of this Royal cédula and to the language used therein respecting the origin of the question decided. Francisco Vázquez, in his petition to the Audiencia of Peru, appears, represented by attorney, as a resident of the city of Natá by virtue of the rights established by the Royal cédula of January, 1557, which, he says, "commands the Governor of the Province of Tierra Firme to appoint a person who should settle and conquer the Province of Veragua, *that was the Dukedom* of the Admiral Don Luis Columbus, but which His Majesty had placed again under the Royal Crown * * *." The Royal cédula of 1560, appointing him Governor, began by stating that he made an agreement and *capitulación* with the Governor of Tierra Firme in order to settle the Province of Veragua, as the latter had been authorized.

Francisco Vázquez, then, was the first of the governors who ruled the Province of Veragua, which continued under that kind of authority during the whole of the Colonial epoch.

¹ León Fernández, *Colección de Documentos para la Historia de Costa Rica*, Vol. V, p. 153.

IV.

PROVINCE OF COSTA RJCA.

1. Royal Veragua; Province of Costa Rica; Government of Sánchez de Badajoz (1539).

As we have said, by Royal cédula of March 2, 1537, the Veragua the government of which was granted to Felipe Gutiérrez, was left split up into two parts: the dukedom, that is to say, the square of twenty-five leagues given to Don Luis Columbus; and the rest of that territory, herein called for greater clearness *Royal Veragua*, in contradistinction to Ducal Veragua.

The said Royal cédula, from which Colombia derives all her rights, simply says in respect of Royal Veragua, that it was left in the Government of Tierra Firme (Castilla del Oro) during the Monarch's pleasure; and the Monarch repeatedly disposed of it, to that extent, at least, therefore, repealing the Royal cédula referred to.

In the first place the jurisdiction over Royal Veragua passed from the Government of Tierra Firme to the Audiencia of Panama, which replaced the former in 1538.

Because of the fact that Royal Veragua depended upon the Government of this Audiencia, its Judge, Dr. Robles, thought that he was authorized to make a *capitulación* giving it to his son-in-law, Hernán Sánchez de Badajoz, who already, through the Vicereine, had the Government of the dukedom under his charge, and because "the one did not go without the other." It was so stated by him in his letter to the Council of the Indies of the 19th of July, 1539 (Doc. No. 15).

But Rodrigo de Contreras, Governor of Nicaragua, had commissioned two captains to undertake the exploration of the Desaguadero, or River San Juan, and, as the latter disembogued on the Veragua coast which had been granted to Sánchez de Badajoz, the Audiencia of Panama informed that governor of the undertaking by Royal *provisiones* of December 17, 1539 (Doc. No. 16); in this he was told that the grant to Sánchez de Badajoz comprised the right of conquest and Captaincy-General of the Province of *Costa Rica*, "which extends from the borders of the Dukedom of *Veragua* and *Zorobará* as far as Guaymura (Cape Camarón) and from Sea to Sea." This is the first time that the *name of* COSTA RICA appears officially, and as equivalent to the wider acceptation of Veragua, that is to say, to the coast discovered by Columbus during his last voyage (as far as the dukedom) with the addition of the extension "from Sea to Sea."

The King, in accord with the Council of the Indies, by Royal cédulas communicated to Sánchez de Badajoz, and to the Audiencia, on April 24th, 1540 (Doc. No. 17), declared void the concessions which the latter made of "the lands which are left to us in the Province of *Veragua* * * * because this is a matter that must be treated solely by our Royal Person and in our Council of the Indies."

2. Province of Cartago; Government of Diego Gutiérrez (1540).

At the solicitation of Diego Gutiérrez, brother of Felipe, and in accord with the views of the Council of the Indies, the Crown authorized him to undertake the conquest and settlement of Royal Veragua, and

issued the Royal *cédula* of November 29, 1540 (Doc. No. 18), which approved the *capitulación*, and conferred upon him by Royal *cédula* of December 16 of the same year (Doc. No. 19), the title of Governor of that province, which was then designated by the name of Cartago.

As appears from these documents, the government granted to Diego Gutiérrez under this denomination of *Cartago*, is the same as that which the Audiencia of Panama improperly granted, under the name of *Costa Rica*, to Sánchez de Badajoz, but with greater precision as to boundaries.

The line of the dukedom is fixed as a basis by the meridian corresponding to the termination of the twenty-five leagues which were to end towards the Bay of *Zorobaró*; the province stretches in length along the coast as far as the River Grande, to the west of Cape Camarón; its width is fixed as from "sea to sea" up to Nicaragua and then limited by this province to fifteen leagues from its Lake Nicaragua and by that of Honduras as far as the River Grande.

This demarcation established by the Royal *cédulas* of 1540, was confirmed by that of January 11, 1541 (Doc. No. 20), in which all the governors of the provinces were commanded to respect the boundaries of the Province of Cartago; by the sentence of the Council of the Indies, of April 9, 1541 (Doc. No. 232), in the suit instituted in regard to the Desaguadero, and by the Royal *cédula* of May 9, 1545 (Doc. No. 29), adding the Province of Cartago to the Bishopric of Nicaragua. All of these go to show that the vague reference to the Royal Veragua, made in the Royal *cédula* of 1537, had no importance and even no legal

THE PROVINCE OF CARTAGO (COSTA RICA)
IN 1540

ACCORDING TO THE DEMARCATION MADE
BY THE EMPEROR CHARLES V
(ROYAL CÉDULA OF NOVEMBER 29, 1540)



force after the recognition and delimitation of the Province of Cartago.

Diego Gutiérrez died in a fight with the Indians, and the Crown, in conformity with the designation made by his son in favor of Juan Pérez de Cabrera, conferred upon the latter the title of Governor of Cartago, on February 22, 1549 (Doc. No. 30). The Council of the Indies having agreed that the conquest of this province be postponed, Cabrera was transferred to the Government of Honduras (1552).

3. Province of Cartago, or New Cartago or Costa Rica, From the Birth of the Province of Veragua (1560).

(a) *Differentiation of the Two Veraguas, After the Suppression of the Ducal Seignory.*

It may be thought that by the retrocession of the Dukedom of Veragua to the Crown, in 1556, the difference between the Dukedom of Veragua and the Royal Veragua disappeared, and that they returned to form the Province of Veragua as it existed before the creation of that dukedom by Royal cédula of March 2, 1537. But such was not the case, for each continued with an independent life, with governments of distinct origin and constituted as distinct provinces under different names.

We have already seen how the conquest and settlement of the suppressed dukedom was made, from Tierra Firme, by Francisco Vázquez, under whose command, as Governor and Captain-General, the *Province of Veragua* was organized in 1560—since then the only province of that name.

In order that the ambiguity of the denomination of Veragua might disappear and not be confused with that of the dukedom, the Audiencia of Panama called the Royal Veragua which was improperly granted to Sánchez de Badajoz, *Costa Rica*, and Charles V called that same Veragua which he granted to Diego Gutiérrez, *Cartago*, perhaps also by not admitting even the name of that grant which he had revoked.

The historian, Fernández de Oviedo, says that Diego Gutiérrez ordered that his Government be called *Cartago and Costa Rica*, under penalty of a hundred lashes to whoever should dare to call it Veragua. In the period that intervened between his government and the year 1573, it was designated indiscriminately by the names of Cartago, New Cartago and Costa Rica, and with each change the latter name came more frequently to be used. *Costa Rica* is, then, the province that was definitively constituted in 1573 by the separation of the portion north of the Desaguadero, which was to be called the Province of Teguzgalpa to differentiate it from that of Veragua; for the latter was reserved the name of Veragua, which has led to so much confusion.

Whilst the formative current of the Province of Veragua came from the side of Tierra Firme, that of the Province of Costa Rica proceeded from Nicaragua and Guatemala, that is to say, from the opposite side.

(b) *Ortiz de Elgueta* (1559).

The King, Don Philip II, by an unquestionable act of sovereignty and without the intervention of any *capitulación* whatever, entrusted the settlement and

government of Royal Veragua to the Licentiate Alonso Ortiz de Elgueta, as *Alcalde mayor* of the Province of Nicaragua, by Royal cédula, dated at Toledo December 13, 1559 (Doc. No. 34), which begins thus :

“We are informed that *between that Province of Nicaragua and that of Honduras and the Desaguadero of Nicaragua, on the side of (a la parte de) the cities of Nombre de Dios and Panama, between the South Sea and that of the North*, there are many Indians without light or knowledge of the faith, but who have shown great evidences of yielding obedience and receiving the Christian doctrine; and since we much desire that this country may be settled and properly governed, as well as the natives thereof enlightened and taught in our Holy Catholic Faith, and also that the Spaniards who go that way be benefited and established and may have a fixed location and livelihood * * * We directed it to be discussed in our Council of the Indies * * * and so we command you that you undertake the same * * * and in the said settlement and exploration you will observe, and will cause to be observed, the directions in this instruction contained, which are as follows:” (Then follow the directions.)

By Royal cédula of February 23, 1560 (Doc. No. 37), this resolution was communicated to the Audiencia of the Confines (Guatemala), directing it to give to the Licentiate Ortiz “every encouragement and aid;” and by another of the same date (Doc. No. 38) the commission conferred upon the latter was reiterated, with new instructions; in the latter he was authorized, as he was in the former, to give lands to the settlers and to exempt them from imposts, so that one could almost say that it had the character of a *carta de población*

(Royal charter), like those which were given at the period of the Spanish reconquest.

In both of these Royal cédulas the territory allotted to the *Alcalde mayor* of Nicaragua is described in the same words which we have underlined in that of December 13th, from which it may be instantly inferred that this territory was the same that was granted to Sánchez de Badajoz under the name of *Costa Rica*, and to Diego Gutiérrez under that of *Cartago*, though it is described with less precision of boundaries than in the latter case.

The illustrious French juriconsult, Monsieur Poincaré, says in the third Memorandum in defense of Colombia (No. 30), that "the province designated under the name of *Costa Rica* in the cédula of February 23, 1560, and granted to the Licentiate Ortiz, *Alcalde mayor* of Nicaragua, did not embrace the ancient Province of Veragua and was no more than a little scrap of land (*un petit lambeau de terre*) included between the Provinces of Honduras and Nicaragua and the Desaguadero."

But in reading this Royal cédula, the name of Costa Rica is not to be found; on the other hand, it may be observed that Monsieur Poincaré has omitted the last part of the description * * * "on the side of the cities of Nombre de Dios and Panama, between the South Sea and that of the North."

With the text thus clipped, the result for Colombia was that "le petit lambeau de terre" called Costa Rica was the Mosquito Coast extending from the Desaguadero or River San Juan, toward the north, which later became the Province of Teguzgalpa. And if it is certain that this portion was also included in the

Costa Rica of Sánchez de Badajoz and the Cartago of Diego Gutiérrez, it is not that the territory entrusted (not granted) to the *Alcalde mayor* of Nicaragua should terminate at the Desaguadero, but that it was extended "to the side of (*á la parte de*) the cities of Nombre de Dios and Panama, between the South Sea and that of the North," that is to say, as far as Tierra Firme, which signifies a further abrogation of the Royal *cédula* of 1537, upon which Colombia bases her rights.

(c) *Juan de Cavallón* (1560).

While Philip II conferred upon Ortiz de Elgueta the commission mentioned, the Audiencia of the Confines (Guatemala) gave a similar charge to the Licentiate Juan de Cavallón, who had been *Alcalde mayor* of Nicaragua; and advised the King, on December 18, 1559 (Doc. No. 35), that it had commanded him to make settlements in the Province of Veragua "which is otherwise called by the name of New Cartago * * * in this district of ours;" the Audiencia also issued a Royal *provisión* on January 30, 1560 (Doc. No. 36), by which the said Cavallón is granted the regulation and license to explore, settle and govern (with the title of *Alcalde mayor*) the Province of Cartago, or New Cartago and Costa Rica, from that of Nicaragua.

The King replied to the Audiencia of the Confines by the Royal *cédula* of July 18, 1560 (Doc. No. 39), which begins thus:

"You state that the Province of Veragua, which is otherwise called by the name of New Cartago, is in that district of yours and border;

on the Province of Nicoya, where we always have a corregidor, * * *"

And referring to the propositions for its exploration and settlement, the King states as follows:

"For the settlement of Nicoya and territory adjacent thereto, we have provided the Licentiate Ortiz, our *Alcalde mayor* of the Province of Nicaragua, to whom was given the commission necessary therefor; and as to the territory that there is in Veragua, on the side of Natá, Captain Francisco Vázquez has settled it by our order. When the commission of each is examined by you, the proper order will be given."

Colombia has brought to her defense a report prepared by various distinguished archivists, librarians and lawyers of Seville, where the Archives of the Indies are kept, concerning this Royal cédula of July 18, 1560; they interpret it as follows:

"The King established with perfect clearness the difference that there is between the territory of Nicoya, the settlement of which had been entrusted to the Licentiate Ortiz, and the other territory not contiguous to Nicoya, territory belonging to Veragua, and which, also by Royal order, the Captain Francisco Vázquez was settling. The expression 'on the side of Natá' (por la parte de *Natá*) merely indicates the point from whence Francisco Vázquez set out with his men to conquer the territory of Veragua."

Monsieur Poincaré, making this report his own, states that there had been omitted in the copy of this Royal cédula, cited by Costa Rica, a comma after

“Veragua” and before “on the side of Natá,” that the name of the Licentiate Ortiz has been confused with that of the Licentiate Cavallón, and that the grant to the Licentiate Ortiz was from Honduras as far as the Desaguadero (third Memorandum of Colombia, No. 30).

Putting aside the latter assertion, which we have just refuted, we will say that the comma does not affect the sense of the text, which, indeed, could not be clearer. The Royal *cédula* does not place the territory of Nicoya in opposition to that of Veragua, nor does it say that only the former was entrusted to the Licentiate Ortiz, because the latter belonged to the other conquest which Francisco Vázquez had begun by Natá.

What this Royal *cédula* does state, and most clearly, are the very conclusions we have just presented; that is, that the ancient Veragua had been divided into two parts; one, the grant under the government of Francisco Vázquez, by which the Province of Veragua was instituted; and the other, that which was entrusted to Ortiz de Elgueta, coterminous with Nicoya, and to which the Audiencia of the Confines referred in delivering it to Cavallón, and of which, furthermore, the King had disposed in conferring it upon the former. The Royal *cédula* refers precisely to the commission given to the Licentiate Ortiz who is mentioned therein by name, which commission was not revoked until later, and then in favor of Cavallón. It is impossible to interpret a legal document with any degree of certainty which is part of an historical series, without reading it in connection with its antecedents; the best experts will fall into error if they do not follow this procedure or if they undertake to consider that document as an isolated fact.

How Cavallón himself interpreted the concession made to him by the Audiencia of the Confines is very clearly shown by the *legal authority* which he granted on September 22nd, 1560 (Doc. No. 41), to his associate and deputy, Juan Estrada Rávago, so that he might represent him in his charge and undertaking. Cavallón declares that the Province of Cartago and Costa Rica, the settlement of which belonged to him,

“* * * is all the territory that is left in the Province of Veragua, from sea to sea, inclusive, and which begins from where ends the square of twenty-five leagues that His Majesty granted to the Admiral Don Luis Columbus, towards the West * * * and it terminates at the Río Grande, towards the West, on the other side of Cape Camarón.”

Philip II, who had, as we have seen, reserved the right to provide in regard to the matter, acted by Royal cédula of February 5, 1561 (Doc. No. 42), addressed to the Audiencia of the Confines, saying that he revoked the commission which he had given to Licentiate Ortiz, and directed that the Licentiate Cavallón execute it under the same conditions provided as to the former, and that, if the latter did not accept it, a Judge of the said Audiencia should go, or that body should appoint another person to carry out the commission in the same manner. The same directions were given in another Royal cédula of the same date, addressed to Cavallón.

It is clearly understood that when the King turned over to Cavallón the undertaking he had entrusted to Ortiz, he performed an act of pure sovereignty, establishing thereby a different demarcation of the Province of Veragua which was under the charge of Francisco Vázquez.

In view of the results of the expeditions of Cavallón

the Audiencia of the Confines thereunto duly authorized, appointed him, by Royal *provisión* of May 17, 1561 (Doc. No. 44), *Alcalde mayor* of New Cartago and Costa Rica, and stated that his jurisdiction, was to extend

“* * * from the boundaries of the village of Nicoya, of the said Province of Nicaragua, forward * * * as far as the limits and jurisdiction of the city of Natá, of the Kingdom of Tierra Firme, called *Castilla del Oro*, the length of the land to the borders of the *Dukedom of Veragua*, and from the South Sea to the North Sea, as far as the Desaguadero, inclusive.”

The King, by Royal *cédulas* of August 4, 1561 (Doc. Nos. 45, 46 and 47), confirmed the appointment of Cavallón as *Alcalde mayor* and of Estrada Rávago as his representative, congratulating both at the same time upon the success of their expeditions, the one by land and the other by sea; and he authorized Cavallón to go back whenever he might desire to reside in the Audiencia of the Confines, of which he was appointed the Fiscal.

(d) *Denial of the Request of the Governor of Tierra Firme, Figuerola (1561).*

Don Rafael Figuerola, Governor of Tierra Firme, having received word of the death of the Governor of the Province of Veragua, Francisco Vázquez, and that the Audiencia of the Confines had authorized the Licentiate Cavallón “to make the entry into Costa Rica,” applied to the King for his own appointment as Governor of the Province of Veragua, and asked that the entry into that of Costa Rica should be prohibited to everybody who did not come from him; he based this

latter request upon the fact that the Count of Nieva, Viceroy of Peru, had authorized him to enter into the Dukedom of Veragua, as he in fact had done, continuing into the "interior territory," as he showed in the report of an inquest, which accompanied his application (Doc. No. 233).

Philip II communicated to him, by Royal cédula dated at Madrid on August 9th, 1561 (Doc. No. 48), the following resolution which is of the greatest importance to the question we are discussing:

"* * * as soon as We knew the death of Francisco Vázquez, whom We had designated for the government of the said *Province of Veragua*, We appointed for the said government Francisco Vázquez, his son * * *. And, also, We have approved and held to be good the said commission that was given by the said Audiencia of the Confines to the said Licentiate Cavallón, in order to make the exploration of the *Province of Cartago and Costa Rica* * * *; therefore, I command you that * * * you leave the Government of the said Province of Veragua to the said Francisco Vázquez, and that you do not interfere to explore and settle the said Province of Cartago and Costa Rica, but leave it to be done by the said Licentiate Cavallón * * * and if you shall have made any discovery or settlement, you shall leave it in the state and condition it may be, without doing more therein; and this you shall do and comply with under the penalties imposed upon persons who do not obey the commands of their King and natural Lord."

Monsieur Poincaré, in the third Memorandum of Colombia hereinbefore cited (No. 32), attaches little importance to this Royal cédula; he says that it shows

that Costa Rica bordered on the Province of Veragua and was distinguished from it, but that the Province of Veragua was distinct from the old dukedom "attached (*rattaché*) to the city of Natá," and that just as it was defined by the Royal *cédula* of 1537 it belonged jointly with the dukedom itself to the Audiencia of Panama.

So, then, if Costa Rica bordered on the Province of Veragua and was distinguished therefrom, it is clear that *it was not the Province of Veragua*. The petition of Don Rafael Figuerola giving expression to a personal desire was the same as the claim of Colombia and was based upon the following syllogism: All Veragua constitutes one entity and belongs to the Government of Tierra Firme; the Dukedom of Veragua and Costa Rica are also Veragua and I am Governor of Tierra Firme; therefore place me in possession of the Dukedom of Veragua and of Costa Rica. But the King denied his petition, declaring that Veragua and Costa Rica were two distinct provinces, with different governments and forbade his interference in either of them.

Substitute the name of Colombia or Panama for Figuerola, and that of the Arbitrator for Philip II, and the present conflict would be solved, without, however, denying to Panama her rights over the Province of Veragua as differentiated from Costa Rica.

(e) *Vázquez de Coronado* (1562).

Cavallón having left to assume his office of Fiscal of the Audiencia of the Confines, the latter appointed Juan Vázquez de Coronado as *Alcalde mayor* of New

Cartago and Costa Rica, in the Royal *provisión* of April 2, 1562 (Doc. No. 49), and prescribed for that office the same conditions as were imposed on Cavallón when the latter "was given jurisdiction."

Philip II, well pleased with the great services of Vázquez de Coronado, appointed him, by the Royal *cédula* of April 8, 1565 (Doc. No. 52), *Governor* for the whole of his life of "the Province and territory of *Costa Rica*," with all the necessary civil and criminal jurisdiction. On the same date he also appointed him Governor of Nicaragua for three years, in order to facilitate the settlement of Costa Rica, conferred upon him the title of *Adelantado* of Costa Rica, for himself and his successors (Doc. No. 53), and made him a grant of a square of land four leagues on each side, wherever he might select them in the latter province. Costa Rica, therefore, as may be seen, remained constituted as such province and was to have its own governor—an office which was increased in importance through the fact that an *Adelantado* was going to be the first to hold it.

The King instituted the province, provided, as stated, with a governor, under the single name of *Costa Rica*, and to it was given the same extension which was determined upon when it was allotted to Ortiz de Elgueta; this is shown by the Royal *cédula* of August 7, 1565 (Doc. No. 54), directed to Coronado, which begins thus:

"To Juan Vázquez de Coronado, our Governor of the Province of Nicaragua and Costa Rica, and *Adelantado* of the said Province of Costa Rica: Having been informed that *between the said province of Nicaragua and that of Hon*

*duras and the Desaguadero of Nicaragua, on the side of (á la parte de) the cities of Nombre de Dios and Panama, between the South Sea and that of the North, lay the said PROVINCE OF COSTA RICA, and that there were therein many Indians without light or knowledge of the faith, but who have shown a great desire to accept our authority, and receive the Christian doctrine, the President and Judges of our Royal Audiencia of the Confines ordered you and gave you a commission in our name and that you should go and make settlements therein * * * and place under our Crown and Royal Lordship the said * * * territory."*

And after stating what Coronado had done and that he, the King, had directed "its consideration" in the Council of the Indies, he charged him that "this territory shall be settled and placed under good administration and order," for which purpose he gave to him the proper instruction.

This Royal *cédula* is a repetition of the one directed to Ortiz de Egueta, and contains the same statement of boundaries in almost the same language, but in this *cédula* the expression "the Province of *Costa Rica*," is used concretely, the direction given by the Audiencia of the Confines to Coronado is confirmed and the work of exploration and settlement already realized within those boundaries is approved, and authorization is given for its conclusion in the same way that it had been begun.

(f) *Perafán de Ribera* (1566).

Vázquez de Coronado having perished on his return voyage to America, the King appointed Perafán de

Ribera *Governor of the Province of Costa Rica*, by the Royal cédula of July 19, 1566 (Doc. No. 56); this cédula, however, does not indicate the boundaries of the territory, the same having been already fixed; but it does state that the governor shall exercise his office "in the matters that it has been customary for the Governors who have been up to this time in the said province to conduct."

Perafán de Ribera continued the work of his predecessors, and presented to the King on July 28, 1571 (Doc. No. 58), a "Relation of the Province of Costa Rica," in which he gives a report of his journeys and of the condition in which that province was found. Wearied by his labors and broken down by his misfortunes and poverty, he resigned his government and left the province in 1573.

4. The Province of Costa Rica Definitively Organized; Government of Artieda (1573).

Cavallón, Estrada Rávago, Vázquez de Coronado and Perafán de Ribera were the ones who by their conquests and establishments created, in fact, the Province of Costa Rica and within the legal boundaries established by the Crown, at the initiation of that work of discovery and settlement, by the orders and instructions given to the *Alcalde mayor* of Nicaragua, Ortiz de Elgueta.

Philip II, knowing the results of the work he had undertaken, and considering the general advantages to be derived from those portions of his dominions, was able with full knowledge of the matter to definitively constitute the Province of Costa Rica and trace its boundaries with certainty, as he did by his Royal

cédula dated at the Pardo, December 1, 1573 (Doc. No. 62).

(a) *Royal Cédula of Philip II, of December 1, 1573.*

This Royal cédula, issued after consultation with the Council of the Indies, contains the *capitulación* with Diego de Artieda, to discover, settle and pacify, at his own cost, the Province of Costa Rica, for which purpose he was granted the Government and Captaincy-General of this province for his own life and that of an heir, with a salary of two thousand ducats.

The conditions under which he was to settle and govern the province were minutely fixed, and its boundaries indicated with great precision; he was also directed therein to take possession in the name of the King "of that which might not have been appropriated."

Twice are the boundaries fixed: the first time in great detail, when the method to be pursued in making the discovery and settlement is prescribed; the second, in more concise terms, when the government is granted to Artieda.

In this second description of the *Province of Costa Rica*, which Artieda is about to discover, settle, pacify and govern, the Royal cédula of 1573 says that it is

"* * * from the North Sea to that of the South in latitude, and, in longitude from the borders of Nicaragua, on the side of Nicoya, straightforward to the Valleys of Chiriquí, as far as the Province of Veragua on the South side; and on that of the North, from the mouths of the Desaguadero, which is on the side of

Nicaragua, *all the territory as far as the Province of Veragua.*"

According to this demarcation, by virtue of the Royal cédula of 1573, there was *segregated* from the Province of Costa Rica its upper part, from the Desaguadero of Nicaragua northward; with this part the Province of Teguzgalpa (on the Mosquito Coast) was formed, and the differentiation of the Provinces of Costa Rica and Veragua was confirmed, thus leaving Costa Rica between Teguzgalpa and Veragua.

(b) Formation of the Province of Teguzgalpa by the Segregation of that of Costa Rica Prior to 1573.

Comparing the demarcation of the Royal cédula of 1573 with the earlier demarcations of Costa Rica, it will be at once observed in the description that part of those demarcations, "between the Province of Nicaragua and Honduras and the Desaguadero of Nicaragua" was suppressed, by which suppressed part it had been made to reach from the latter as far as the River Grande and Cape Camarón. The Royal cédula fixed as the northern boundary of the Province of Costa Rica the *Corregimiento* of Nicoya and the Desaguadero of Nicaragua.

By this adjustment tribute was paid to historical fact, and concession made to convenience in administration, for although that portion was included in the demarcation of Ortiz de Elgueta, those who, in accordance therewith—Cavallón, Estrada, Coronado and Ribera—made the conquest and the establishments of Costa Rica, concentrated their undertakings between the Desaguadero and the Province of Veragua, and the



COSTA RICA

*ACCORDING TO THE DEMARCATION
MADE BY PHILIP II*

(ROYAL CÉDULAS OF DECEMBER 1, 1573

FEBRUARY 18, 1574

DECEMBER 29, 1593, ETC.)

King acted with much discernment in segregating the upper territory which, from its geographical form and its distance from the capital, presented great difficulties in the way of administration.

This very segregation is the best proof of the error of Colombia's counsel who located the little scrap (*le petit lambeau*) called Costa Rica in the portion segregated, when in fact the province of that name was definitively constituted at the time it lost that portion.

The result of that Royal *cédula* of 1573 was the issuance of that of February 10, 1576 (Doc. No. 65), by which Philip II created the Province of *Teguzgalpa* out of the segregated territory giving it by *capitulación* to Diego López for settlement and government—a region “which comprises all the territory that is included from the mouth of the *Desaguadero* on the North side as far as Cape *Camarón*, in the same direction where the Province of Honduras begins * * *” (Doc. No. 234).

This territory bordering on *Honduras* and with *Nicaragua* was for a long time disputed by these Republics, until His Majesty the King of Spain, as arbitrator, decided the boundary question between the two in his Award of December 23, 1906 (Doc. No. 437), fixing the point of the divisionary line, for the part that belongs to each, at Cape *Gracias á Dios*.

In that arbitration Don Francisco Silvela defended Honduras and Don Antonio Maura represented Nicaragua. These are the same two distinguished jurisconsults who have defended the rights of Colombia by maintaining that to her belonged all of the Veragua of the year 1537, and making that province reach as far as Cape *Gracias á Dios*.

However, in the course of the argument in that arbitral proceeding, both agreed in disregarding the claims of Colombia to the territory of Veragua which began at the Desaguadero and which was called the Province of Teguzgalpa.

Señor Silvela alleges, as one of the principal bases of the right of Honduras, the *capitulación* of Artieda, of December 1, 1573, saying distinctly: "THERE IS ONE SINGULAR THING IN THIS CAPITULACIÓN AND THAT IS THE FIXING DEFINITELY OF THE BOUNDARIES OF COSTA RICA." (*Alegato* of Honduras, 1905, p. 128.)

Señor Maura, in the *Réplica of Nicaragua*, 1905, asserts that the Cartago of Diego Gutiérrez's *capitulación* of 1540 was framed out of the remains of the break-up or division of the ancient Province of Veragua (p. 109); that the *capitulación* of Artieda, of 1573, clearly distinguished Costa Rica from the Province of Nicaragua (p. 72); that nothing is so conclusive as the *capitulación* of Diego López, of 1576, in which there was included (in order to form the Province of Teguzgalpa) all of the territory from the Desaguadero to Cape Camarón (p. 73); and that neither Honduras nor any one, casts doubt of the annexation to Nicaragua of the said coastal zone from the Desaguadero or San Juan river toward the north or the northeast (p. 77).

Costa Rica, then, can rely for support on the authority of Señores Silvela and Maura, counsel for Colombia, to combat the following broad assertion made by the latter in her *Summary of Conclusions*, presented to the President of the Republic of France and subscribed by Monsieur Poincaré in Paris on July 4, 1900:

"All the Province of Veragua ought then to belong to Colombia. From its origin the Province of Veragua extended as far as Cape Gracias á Dios. (See the Royal cédula of March 2. 1537.) It has never been divided."

(Toute la Province de Veragua doit donc appartenir à la Colombie. Dès l'origine, la Province de Veragua s'est étendue jusqu'au cap de Gracias á Dios (Voir Cédule Royale du 2 Mars 1537). Elle n'a jamais été divisée.

(c) *Boundaries With the Province of Veragua.*

The demarcation made to Ortiz de Elgueta (from the boundary of the segregated territory with which Teguzgalpa was formed) extended from sea to sea. "to the side of (à la porte de) the cities of Nombre de Dios and Panama." The Royal cédula of 1573 clearly fixed the Province of Veragua as the end of Costa Rica, both on the north and on the south: it did more, since it expressly included within Costa Rica the Bocas del Drago on the north, and on the south the Valleys of Chiriquí.

In prescribing the manner in which Artieda was to carry out his charge, he is told "* * * and you shall settle in the Province of Costa Rica three cities, * * * one of which must be at the Port of *Bocas del Drago*, which is on the North Sea of said province."

By this name of Bocas del Drago there was designated the Bay of Almirante and the Lagoon of Chiriquí, into which empties the Guaymí, San Diego or Cricamola river, it being perfectly explained that its adjoining territories were included in Costa Rica because they had been traversed and conquered by the founders of this province, with the approval and praise

of the King. Estrada Rávago founded, in 1560, the city of Castillo de Austria on the Bay of Almirante; Juan Vázquez de Coronado, in 1564, subjected all the tribes of Indians that occupied its banks nearly as far as the Escudo de Veragua; and Perafán de Ribera traversed the same territories in 1570 and 1571.

Diego de Artieda always understood that they belonged to his Government, as is shown by his deeds and his communications to the King, during the fourteen years in which he had it in charge. The Royal cédula of August 30, 1576 (Doc. No. 66), contains this phrase: “* * * it being very well known that the said Guaymí river and Bocas del Drago and the Almirante Bay are the same thing.” The former, in fulfillment of the duty of founding a city at Bocas del Drago, founded the one that he called “*Artieda*,” on the banks of the Guaymí river, as is evidenced by the certificate of December 8, 1577 (Doc. No. 67); and afterwards he took possession of the Valley of Guaymí, as is evidenced by a certificate delivered by a notary in March, 1578 (Doc. No. 68). In front of this valley is the island called *Escudo de Veragua*. The King showed in his cédulas of June 3, 1580 (Doc. No. 69), that he was informed of and satisfied with the settlements made by Artieda at Bocas del Drago.

After Artieda, the indication of Escudo de Veraguas was confirmed as the point of the divisionary line which left within Costa Rica the lands adjoining the Bay of Almirante and the Lagoon of Chiriquí.

The Royal cédula of Philip III of May 31, 1600 (Doc. No. 71), directed to the Audiencia of Panama, indicated the Island of Escudo de Veragua as the end or western extremity of the warring Indian tribes of the

Province of Veragua. In a certificate delivered by a notary on October 10, 1605 (Doc. No. 72), Don Diego de Sojo testifies that by virtue of the commission given to him by Don Juan de Ocón de Trillo, Governor and Captain-General of Costa Rica, and in the name of the King, he founded the city of *Santiago de Talamanca* and, he says, he

“* * * indicated for it and gave to it for jurisdiction in latitude all the territory and district which there is from the summit of the Cordillera to the North Sea, and in longitude from the river *Tarire* and the ford that is crossed going from the said city to the Province of *Tariaca*, all the territory that runs to the East, which is the length of it as far as the *Escudo de VERAGUA*, which is the end that separates this Government from that of *Veragua*.”

The Province or region of Talamanca continued to belong to Costa Rica during the whole of the Spanish domination.

The *Valleys of Chiriquí* constitute that part of the Province of Costa Rica which borders upon that of Veragua, on the Pacific side. Colombia argues in her Memoranda (Second, p. 89, and Third, No. 47), that the *capitulación* of Artieda does not speak of the Valleys of Chiriquí as a foreign frontier with Veragua, but only as designating a bearing, as though to say “in the direction of” those valleys. But the text of the Royal cédula of 1573 does not admit of this interpretation, for, in stating the longitude of the Province of Costa Rica, it says specifically, “from the borders of Nicaragua, on the side of Nicoya, *straightforward (derecho á)* to the Valleys of Chiriquí, *as far as* the Province of Veragua, on the South side.” The direc-

tion was indicated by the South Sea, that is the Pacific Ocean; and in this direction the Royal cédula expressly declared the right of Costa Rica to the Valleys of Chiriquí. If it is claimed that those valleys only indicated a direction, the longitude of Costa Rica may be continued still further beyond them and its terminal extended "as far as the Province of Veragua."

Such a declaration of right is not strange, inasmuch as Vázquez de Coronado and Perafán de Ribera had traversed and taken possession of the plains or savannas of Chiriquí, and had considered them to be within their jurisdiction.

Although Costa Rica had the right to the Valleys of Chiriquí, the later governors tolerated the encroachments of the Governors of Veragua as far as the *Chiriquí Viejo* river (*old Chiriquí river*—not to be confused with others of the same name not having this qualification); and this river was left as the divisionary line of Costa Rica, which meant for that country a loss of 208 square leagues (1872 square miles).

V.

THE QUESTION OF BOUNDARIES SETTLED BY THE ROYAL CEDULA OF 1573 AND NOT BY THAT OF 1537.

1. Importance, Confirmation and Subsistence of the Royal Cédula of 1573.

The Royal cédula of Philip II of December 1, 1573, is immensely important because it settled the question of boundaries pending between the Republics of Costa Rica and Panama, as far as relates to Spanish colonial

law, for thereunder the Province of Costa Rica was definitively constituted and marked out; its legal existence and delimitation, however, is denied by the Republic of Panama, the successor to that of Colombia, on the assumption that it belonged to the latter as an integral part of the ancient Veragua.

It results from all that has been said in the first part of our opinion, that the Royal *cédula* of 1573 marked the end of the historico-legal evolution of Veragua, from the time when the whole of the coast discovered by Columbus, from Cape Honduras to the point of San Blas, was understood by that designation until it came to constitute three distinct provinces: that of *Veragua*, properly so-called, that of *Costa Rica* and that of *Teguzgalpa*. The differentiation of the primitive Veragua into two parts, the Ducal Veragua and the Royal Veragua, began by the creation of the Dukedom of Veragua (1537) and the granting of the *capitulación* of Diego Gutiérrez (1540), the result of which was the organization of two different provinces, in 1560: the Province of Veragua, under Francisco Vázquez and that of Costa Rica under Cavallón. The Royal *cédula* of 1573 divides the latter into two parts: that which is called Teguzgalpa and that properly denominated Costa Rica, in which latter is included Bocas del Drago and the Valleys of Chiriquí, places bordering upon the Province of Veragua.

The demarcation established in this Royal *cédula* of 1573 was confirmed: (1) by that of February 18, 1574 (Doc. No. 63), which conferred upon Diego de Artieda the title of Governor and Captain-General of Costa Rica, and fixed at the same time the boundaries of his jurisdiction; (2) by the Royal *cédula* of December 29, 1593 (Doc. No. 70), giving the government of this

province to Don Fernando de la Cueva "as it was held by Diego de Artieda Chirino;" and (3) by the other Royal cédulas appointing governors and captains-general, who held the position with the same salary and within the same bounded territory.

This demarcation is also confirmed by the facts to which we have referred relating to the boundaries, and many acts of the Superior Government, of the audiencias and of the governors, relating thereto may be cited, since it was in force and subsisted until the end of the Spanish domination. Counsel for Colombia do not mention any other legal demarcation as a substitute therefor, aside from what is stated in order to impugn it; but seek for support in the *Recopilación de Indias* and in the Royal order of 1803.

2. Inefficacy and Abrogation of the Royal Cédula of 1537.

Colombia concentrates all her forces in support of the proposition that the question of boundaries with Costa Rica was settled by the Royal cédula of Carlos V, of March 2, 1537, which placed under the administration of Tierra Firme (Castilla del Oro) all that was left of Veragua after taking away the twenty-five leagues for the dukedom.

This means that from Colombia's viewpoint there is no question of boundaries with Costa Rica; rather is it a question of "to be or not to be," involving the very existence of the latter as a nation, for Colombia believes that Costa Rica had no legal existence as a Spanish province and that her territory

belonged to that of Tierra Firme, as did all of Royal Veragua.

Bearing in mind that Charles V, by this Royal *cédula*, provided that Royal Veragua should be kept under the Government of Tierra Firme *whilst* he might deem it desirable, it will be easy to understand its inefficacy against later dispositions of the Crown, since in issuing them it was not infringed.

But if there is any desire to keep it alive, forgetting its conditional character, it must be said that it was repeatedly abrogated, whenever, indeed, the Sovereign made divisions of the territory of Veragua and created different governments from that of Tierra Firme, and also whenever he confirmed these changes.

Thus, the Royal *cédula* of March 2, 1537, was abrogated:

1. By the Royal *cédulas* of November 29, and December 16, 1540 (Doc. Nos. 18 and 19), giving under *capitulación* to Diego Gutiérrez the Province of Cartago and appointing him the Governor thereof; that of January 11, 1541 (Doc. No. 20), directing all the governors of the Indies to respect the boundaries of this Government, and that of February 22, 1549 (Doc. No. 30), giving the title of Governor to Pérez de Cabrera, as successor to Gutiérrez.

2. By the Royal *cédula* of December 13, 1559 (Doc. No. 34), establishing the demarcation which was given to Ortiz de Elgueta; that of February 23, 1560 (Doc. No. 37), ordering the Audiencia of Guatemala to respect it; that of February 5, 1561 (Doc. No. 42), revoking the commission given to Ortiz and turning it over on the same terms to Cavallón, and that of August

4. of the same year (Doc. No. 47), confirming the appointment of *Alcalde mayor* given by the Audiencia to Cavallón, whose acts of settlement and those of his deputy Rávago were approved.

3. By the Royal cédula of July 18, 1560 (Doc. No. 39), which divided Veragua into two parts, one allotted to Ortiz de Elgueta and the other to Francisco Vázquez; that of August 20th of the same year (Doc. No. 40) appointing Francisco Vázquez Governor and Captain-General of the Province of Veragua; and that of August 9, 1561 (Doc. No. 48) denying the claims of Figuerola, by right of his office of Governor of Tierra Firme and by order of the Viceroy of Peru, to govern and settle the Province of Veragua and that of Costa Rica, because these were under the respective charges of Alonso Vázquez and Cavallón—a most important cédula, therefore, inasmuch as those claims were the same as those now made by Colombia and Panama.

4. By the Royal cédula of April 8, 1565 (Doc. No. 53), appointing Vázquez de Coronado Governor and Captain-General of Costa Rica; and by that of August 7, following (Doc. No. 54), describing the province under his command in the same manner as in the commission given to Ortiz de Elgueta.

5. By the Royal cédula of December 1, 1573 (Doc. No. 62), approving the *capitulación* of Diego de Artieda, by which Teguzgalpa was segregated from the Province of Costa Rica and the boundaries of the latter fixed with that of Veragua; that of February 18, 1574 (Doc. No. 63), conferring upon him the title of Governor and Captain-General of Costa Rica, with that demarcation; that of February 10, 1576 (Doc. No. 65), creating the Province of Teguzgalpa; that of August

30 of the same year (Doc. No. 66), defining the boundaries of Costa Rica by Bocas del Drago; and that of June 3, 1580 (Doc. No. 69), approving the conduct of Diego de Artieda in respect to the settlements he made within the limits of his jurisdiction.

6. By the Royal *cédula* of December 29, 1593 (Doc. No. 70), granting to Don Fernando de la Cueva the Government of Costa Rica as it had been held by Diego de Artieda; the appointment of the later governors of Costa Rica and the disposition concerning the adjacent *audiencias*, of which we will speak later.

There can not, then, be the slightest doubt that the Province of Costa Rica was legally constituted and marked out by the Royal *cédula* of Philip II, of 1573, and not by that of Carlos V of 1537, which was ineffectual in itself and the subject of so many *abrogations*.

PART SECOND

The Recopilacion de Indias Respected and Confirmed the Existence and Demarcation of Costa Rica.

SUMMARY.

I. The Recopilación de Indias and its Abrogative Force.

1. The Argument of Colombia.
2. General Consideration Concerning the *Recopilación de Indias* and How Its Laws Respect and Confirm the Existence and Demarcation of Costa Rica.

II. The Demarcation of the Audiencias.

1. Importance of the Audiencias in the Government of the Indies.
2. History of the Audiencias of Panama and Guatemala.
3. Comparison Between Laws 4 and 6 of Title 15, Book II, Which Treat of These Audiencias.
4. Interpretation of Law 4; What Were Castilla dei Oro, Natá and the Government of Veragua, Which Were Included by That Law in the Audiencia of Panama.
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 - (a) From the Creation of that Audiencia to 1563;
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IV. Interpretation of Law 9, Title 1, Book V, Declaring that the Whole of the Province of Veragua is Under the Government of Tierra Firme.

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3. Special Consideration of the *Capitulaciones*:
 - (a) Juridical Character of the *Capitulaciones*;
 - (b) The *Capitulaciones* in the Light of Book 4 of the *Recopilación*;
 - (c) *Capitulaciones* Originating the Provinces of Veragua and Costa Rica.
4. Unilateral Acts of the Crown in the Unquestionable Exercise of Sovereignty and Titles of the Governors; Final Deductions.

I.

THE RECOPIACIÓN DE INDIAS AND ITS ABROGATIVE FORCE.

1. The Argument of Colombia.

It seems impossible, after what we have said with respect to the inefficacy of the Royal cédula of March 2, 1537, and its numerous abrogations (especially by that of 1573), that Colombia could have maintained the subsistence of the former in contravention of the legal principle that "the later law abrogates the prior ones." But she did; because, relying on this same principle, she gives it as her understanding that the *Recopilación de Indias* reestablished the cédula of 1537 and repealed all the dispositions that had abrogated it.

Señor Silvela and Monsieur Poincaré, in their briefs in defense of Colombia, rely upon the Royal cédula of Charles II, of May 18, 1680 (Doc. No. 91), which sanc-

tioned the *Recopilación*, and which was published at the beginning of it, when they make the assertion that this code—a summary of all the Royal dispositions which constituted the system of government for the dominions of Spain beyond the seas—abrogated everything that was not included within it, because the King said, “it is our will that from now forward they shall not have any authority whatever.”

Señor Maura in his opinion embodied in the defense of Colombia, formulates “the synthetical idea,” of the litigation, saying that none of the documents prior to the Royal cédula of May 18, 1680, can be taken into consideration, except under the condition that they be submitted to the obligatory force of the compiled laws, which in every case must prevail over contrary disposition; and after adding that this principle greatly simplifies the litigation, he goes on to show that the Compilation of the Laws of the Indies was not a mere collection but a real body of laws in which was re-enacted all the preceding legislation, with the repeal thereby of whatever was not included, as was done in the “*Fuero Juzgo*,” (ancient laws by the Gothic Kings), the “*Fuero Viejo*,” (ancient laws), the “*Siete Partidas*” (the laws of Castile compiled by King Alfonso the Tenth) and the statutory compilations of Aragón, Catalonia, Navarre and Majorca.

Starting from this basis, counsel for Colombia deny the existence of the Province of Costa Rica, on the ground that they do not find it mentioned in the laws fixing demarcations of audiencias; they merge it in the Province of Veragua, and put the latter back under the Royal cédula of 1537 because they find the latter cited in one of the laws, and, finally, take from the

Royal cédulas that fix boundaries all of their authority, because they do not find them converted into laws.

2. General Consideration Concerning the *Recopilación de Indias* and How Its Laws Respect and Confirm the Existence and Demarcation of Costa Rica.

The *Recopilación* of the Laws of the Indies was not, in fact, a *collection* (*repertorio* or *répertoire*) compiled with the single purpose of facilitating a knowledge of the old dispositions; neither was it a *code* in the scientific acceptance of that word; that is a coordinate grouping of a particular system of laws under one common principle of unity, formulated once for all and without continuous references to ancient laws further than may be inspired thereby.

The *Recopilación de Indias* was, like all compilations, a collection of the laws of various periods. The texts of these laws were reproduced, in whole, or part, or in modified form, the chronological sequence of some having been changed for greater convenience, and the citation of its origin or source having been inserted at the head, or on the margin, of each; and it is clear that it may be compared, in this respect, with other compilations which were made in Spain, with the exception of *Siete Partidas*, which possessed the characteristics of a code.

It is certain that the *Recopilación de Indias* did have abrogative force; not absolute, however, as the counsel for Colombia assert, but *limited*, as was clearly expressed in said Royal cédula of Carlos II, of May 18, 1680, the latter part of which counsel persistently omit. This Royal cédula, after directing that the Laws of the *Recopilación* shall control, specifically states,

“* * * leaving in their force and vigor the Cédulas and Ordinances given to our Royal Audiencias, in so far as they are not contrary to the Laws herein.”

And in various texts of the *Recopilación* the subsistence of prior dispositions is declared, always, of course, under the condition that they are not contrary to the said laws.

Therefore, the Laws of the *Recopilación* respect and confirm the existence of the Province of Costa Rica, since, far from suppressing it, they expressly recognized it; they respect and confirm also the boundaries which it then had, as they did not modify the demarcation of audiencias, and the law concerning the boundaries of governments declares in force the existing legal situation.

In the development of this thesis, we will take up all the questions which have been the subject of controversy and relate to the *Recopilación de Indias*, expounding them in the order which we consider most desirable for clearness in the demonstration.

II.

THE DEMARCATION OF THE AUDIENCIAS.

1. Importance of the Audiencias in the Government of the Indies.

Charles V divided the government of the American territories into two great viceroyalties, that of New Spain (Mexico) and that of Peru; he subdivided the former into the four audiencias, of Santo Domingo, Mexico, Guatemala and Guadalajara, which he created; and the second into the three audiencias of Pan-

ama, Lima and Santa Fé, which he also created. The number of the audiencias in Peru was increased by Philip II, with the addition of those of Charcas and Quito, by Philip III with that of Chile, and, by Philip IV, with that of Buenos Aires.

This division of territory into audiencias was not merely judicial, but of a general character and admirably adapted. Each audiencia had under its charge, besides the administration of justice, the entire civil and even military government of the provinces included in its district.

Law 1, title 15, book II (Doc. No. 105), of the *Recopilación*, states that in all the territory that had been discovered up to that time in the Kingdom and Seignories of the Indies, there were founded twelve audiencias and Royal chancelleries (the eleven mentioned and that of Manila), “* * * in order that our vassals may have those who may *govern* and *rule* them in peace and with justice; and whereas their districts have been divided into Government, *Corregimientos* and *Alcaldías mayores* * * * which are subordinate to the Royal Audiencia * * *.”

And in this same title the boundaries of the district of each one of them are indicated.

The fact, therefore, that a province belonged to a particular audiencia, not only signified that it depended upon it judicially, but also for civil government.

2. History of the Audiencias of Panama and Guatemala.

Colombia, starting out with the theory that she is the heir of the whole of the territory which was under the Audiencia of *Panama* (also called *Tierra Firme*)

makes every effort to prove that the *Recopilación*, in including all of the Province of Veragua in the Government of Tierra Firme—according to the Royal cédula of 1537—also included the territory of Costa Rica by reason of its being comprehended in the Veragua of that epoch. Leaving till later the interpretation of the law which especially refers to the Province of Veragua, and which, as we shall see, is the province that arose out of the dukedom, let us now examine the laws that treat of the demarcation of the Audiencias of Panama and Guatemala. But before doing so, the history of those two audiencias should be briefly related because it is quite complicated, and also because it will tend to dissipate another of the equivoques of which Colombia has made use in her quibbling; to wit, that the Audiencia of Panama was a very different thing, according to whether it is taken as existing alone in that part of America, or in co-existence with that of Guatemala.

The Audiencia of *Santo Domingo* of the Island of Española was founded in 1526, the first of those established in the Indies, and it had under its jurisdiction, besides, the islands of the Sea of the Antilles, the territories on the coast discovered by Columbus during his last voyage, to which were given the name of Veragua, and the rest which were discovered on the Isthmus and in southern America.

But at the same time that the conquest and government of Veragua was being organized under Felipe Gutiérrez and the Dukedom of Veragua created—and perhaps with the latter creation in view—the establishment of another audiencia was under way; to this was given the name of *Panama* in Tierra Firme. We infer this from Law 4, title 15, book II, of the *Recopilación*

(Doc. 106), referring to this audiencia, which cites as the origin thereof the Royal cédula of February 30, 1535, issued two months after the approval of the *capitulación* with Felipe Gutiérrez, and that of March 2, 1537; that is, when this *capitulación* was revoked, the existence of the dukedom (created in the same year) was ratified, and it was declared that the rest of Veragua would be understood to be under the government of the Province of Tierra Firme, called Castilla del Oro, until the Crown should otherwise provide.

The Audiencia of Panama, which was constituted by the Royal cédula and ordinances of February 26, 1538 (Doc. No. 14), comprised within its district "the Province of Tierra Firme, called Castilla del Oro, and Provinces of the Río de la Plata and the Strait of Magellan, and New Toledo and New Castile, called *Peru*, and River San Juan, *Nicaragua* and Cartagena and *Dukedom of Zorobará*, and whatever islands and provinces there might be both on the South Sea as well as on the North Sea."

In view of the impossibility of governing such an enormous territory (Central and South America), and after the death of Pizarro in Peru and of Alvarado in New Spain, Charles V divided it in his Ordinances of Barcelona, November 20, 1542 (Doc. No. 26), called the "New Laws" and also "Laws of Reformation of the Indies," by suppressing the Audiencia of Panama, creating the Viceroyalty of Peru with an audiencia in Lima and directing another audiencia to be established "within the confines of Guatemala and Nicaragua * * *" which "shall have under its charge the government of said provinces and adjacent regions."

By the Royal cédula of September 13, 1543 (Doc.

No. 27), this latter audiencia was in fact created, and denominated the Audiencia of the *Confines* (of the confines, or borders, of Guatemala), comprising within its district the provinces of Guatemala, Nicaragua, Chiapa, Yucatán, Cozumel, Higueras, Cape Honduras “* * * and all other provinces and islands that there may be on the coast and in the region of the said provinces as far as the Province of Tierra Firme called Castilla del Oro, inclusive”; that is to say, the whole of Central America, including Veragua, although it was not mentioned. This audiencia was first installed in the city of Gracias á Dios (1544) and afterwards transferred to that of Santiago de los Caballeros de *Guatemala* (1550), and from which it was given the latter name.

But in moving from one capital to another, its district was reduced; Castilla del Oro was lost to it in consequence of the reform made in the Audiencia of Lima whereby a part of the latter was taken away to form the Audiencia of Santa Fé de Bogotá in the New Kingdom of Granada, in obedience to the Royal cédula of June 17, 1549. And there is not the slightest doubt but that Castilla del Oro was separated from the Audiencia of the Confines, or Guatemala, and therefore from Veragua, for the Royal cédula of Charles V of May 2, 1550 (Doc. No. 133), which is Law 7, title 1, book V, of the *Recopilación de Indias*, specifically says:

“We command that the Province of Tierra Firme, called Castilla del Oro, *shall belong to the Provinces of Peru* and not to those of New Spain (Mexico).”

Abuses committed by the Audiencia of the Confines, or Guatemala, and the convenience of better service,

led to its transformation into the *Audiencia of Panama*, upon the territorial basis of that of Guatemala, with important modifications, however, by the Royal cédula of Philip II, of September 8, 1563 (Doc. No. 50); and its headquarters were transferred to the city of Panama. The audiencia lost, according to that cédula, the Province of Guatemala and other territories in the north, and was given for a boundary the Gulf of Fonseca, exclusive, and the Ulúa river, and it gained the Province of Castilla del Oro as far as the Darién river, exclusive.

The Viceroy and the Audiencia of New Spain (Mexico) stated to the King, on February 26, 1564, the defects in this reform, and begged that the Audiencia of *Guatemala* might be re-established; this petition was granted in January, 1567, and that audiencia replaced in the condition it was prior to 1563. The Royal cédula of June 28, 1568 (Doc. No. 57), expressly designated as integral parts thereof, the Provinces of Guatemala, Chiapa, Higueras, Verapaz, Cape Honduras, and Nicaragua “* * * and whatever other islands and provinces there may be on the coast and in the region of the said provinces, as far as the Province of Nicaragua.” This audiencia was again installed in the city of Santiago de los Caballeros on March 3, 1570.

The Audiencia of *Panama*, however, did not disappear; there remained within it, in 1570, Tierra Firme and the Province of Veragua which had been constituted in 1560, but not that of Costa Rica which was contiguous with the Province of Nicaragua.

The Audiencia of *Guatemala* continued thereafter as a dependency of the Viceroyalty of Mexico, whilst that of *Panama*, after the re-establishment of the latter,

belonged to the Viceroyalty of Peru, and they were, respectively, the extremes and frontiers of the two viceroyalties.

3. Comparison Between Laws 4 and 6, of Title 15, Book II, Which Treat of These Audiencias.

Law 4, title 15, book II (Doc. No. 106), of the *Recopilación de Indias* (according to the Royal cédulas which it cites with others as complements thereof, and to what was provided by Philip IV in the same *Recopilación*), designates in the following manner the district of the Audiencia of *Panama*:

“It shall have for district the Province of Castilla del Oro, as far as Puertobelo and its territory; the city of Natá and its territory, the Government of Veragua; and, upon the South Sea, toward Peru, as far as the Port Buenaventura, exclusive; and from Puertobelo toward Cartagena, to the River Darién, exclusive, with the Gulf of Urabá and Tierra Firme
* * * .”

And in fixing the boundaries of this district, it says:

“* * * bordering on the East and South upon the Audiencias of the New Kingdom of Granada and San Francisco de Quito; on the West with that of Santiago de Guatemala; and upon the North and South, upon the two seas of the North and South.”

Law 6 of the same title and book (Doc. No. 107), of the *Recopilación* (according to the cédulas mentioned, which it cites with other complementary cédulas, and to what was provided by Philip IV), es-

tablished the district of the Audiencia of *Guatemala*, as follows:

“It shall have for its district the said Province of Guatemala, and those of Nicaragua, Chiapa, Higueras, Cape Honduras, Verapaz and Soconusco, with the islands of the coast.”

And it adds:

“* * * bordering on the East upon the Audiencia of *Tierra Firme*, on the West, upon that of *New Galicia*, and upon the latter and the North Sea, on the North, and, on the South, upon the South Sea.”

The first thing that is noted in comparing these two laws is that no geographical dividing line is designated between the Audiencia of Guatemala and that of Panama. They only state that one begins where the other ends; therefore they do not settle the question of boundaries between the Provinces of Costa Rica and Veragua.

But from the enumeration made by these two laws of the provinces which are comprised in each of these audiencias counsel for Colombia deduce that the territory of Costa Rica was included in the Audiencia of Panama, because this province does not appear to be mentioned by Law 6 as among those of the Audiencia of Guatemala, whereas Law 4 expressly includes the Government of Veragua in that of Panama.

Let us see in the first place how far Law 4 goes with regard to the explicit inclusion, that being the affirmative part of the argument; we shall see later what may be the effect of the omission of the name in Law 6.

4. Interpretation of Law 4; What Were Castilla del Oro, Natá and the Government of Veragua, Which Were Included by That Law in the Audiencia of Panama.

Law 4 begins the description of the Audiencia of Panama with the Province of *Castilla del Oro*, from Portobelo as far as the Darién river, exclusive. This province which, in some demarcations, appears as the extreme limit of Royal Veragua, was included in the Audiencia of the Confines, or Guatemala, on the creation of the latter in 1543; but the Royal *cédula* of May 2, 1550, directed that it should belong to the Viceroyalty of Peru and not to that of New Spain (Mexico). It returned to the Audiencia of the Confines when it was transferred to Panama, in 1563, and remained in that of Panama when the latter was dismembered by the re-establishment of the Audiencia of Guatemala, in 1568; and in the Audiencia of Panama it was retained by the *Recopilación de Indias*. These fluctuations reveal the fact that it was an intermediate province between the Viceroyalties of Mexico and Peru, in which the jurisdiction of the latter prevailed.

In the direction of New Spain, Law 4, locates the city of *Natá* and its territory after *Castilla del Oro*, and lastly the Government of *Veragua*. Counsel for Colombia, continuing to juggle with the equivocal involving this name, understand that this Government of Veragua was the Royal Veragua, in which Costa Rica was included, and not the Ducal Veragua, for the latter has been added to the city and territory of *Natá*.

To dissipate this erroneous interpretation, it is enough to refer to what we have said in PART FIRST, concerning the transformation of the Dukedom into

the Province of Veragua. When the dukedom was suppressed it was not added to *Natá*, but the residents of that city were authorized to go into that country for conquest and settlement; and it was by virtue of that authority that Francisco Vázquez went there with his men; he it was whom the Crown appointed, soon afterwards, Governor of the province that was then left definitively constituted (1560) under the name of Veragua (Ducal Veragua); and this is the Government to which Law 4 alludes, after speaking of the city of *Natá* and its territory.

Natá, from its origin, in 1520, always belonged to the jurisdiction of Panama (Province and Audiencia), and was administered by an *Alcalde mayor* appointed by the Governor or President of the Audiencia of Tierra Firme. The Province of Veragua, which was formed from the dukedom, was raised to the status of a government and captaincy-general, which office was provided for by the King himself, it having by reason of its class and salary a higher rank than that of *alcalde*. Far from the Province of Veragua being united, or subordinated to the city of *Natá*, the residents of the latter were the ones who, tired of their *alcaldes mayores*, petitioned for the aggregation of their city to that province; but without success.

It cannot, therefore, be successfully maintained that the Dukedom of Veragua was comprised in *Natá*, in order, later, to include Costa Rica in the "Government of *Veragua*." The farthest counsel for Colombia can go is to consider the two Veraguas—ducal and royal—under this denomination. But to this is opposed the history of the formation of the two provinces of Veragua and Costa Rica, the fact of their existence at the time the *Recopilación* was made, and the pro-

visions of that Compilation, in its Law 1, title 2, book V (Doc. No. 136), entitled, “*de provisión de oficios*” (provisions for appointments to office), under which there was reserved to the King the right to fill the office of Governor and Captain-General of the Province of *Veragua* (with a salary of one thousand pesos), which is “in our Royal Audiencia of *Panama*,” of PERU, and that of the Governor and Captain-General of the Province of *Costa Rica* (with a salary of two thousand ducats), which is “in our Royal Audiencia of *Guatemala*,” of NEW SPAIN.

In deference to this law, promulgated in the time of Charles II, when the *Recopilación* was compiled, it is not possible to interpret the “Government of *Veragua*” by merging therein the Province of *Costa Rica*.

5. Interpretation of Law 6. The Omission of the Name of *Costa Rica* of no Importance in Treating of the Audiencia of *Guatemala*.

It is clearly established from what we have just said, that the Government of *Costa Rica* was included in the Audiencia of *Guatemala*, since it was so expressed in the *Recopilación* itself, and it was a thing distinct from the Government of *Veragua*, with which the demarcation of the Audiencia of *Panama* ends, as stated by Law 4.

The description made by Law 6 of the Audiencia of *Guatemala* is less detailed, doubtless because those who prepared the *Recopilación* did not consider it necessary, *after having specifically provided, in Law 4*, that the Audiencia of *Panama* *terminated* with the Government of *Veragua*, deeming it sufficient to affirm

that that of Guatemala bordered with it on the east. The omission of the name of *Costa Rica* is explained also by the fact that instead of writing an entirely new law, they took for a text that of the Royal cédula of June 28, 1568, which, with some corrections, they inserted in the *Recopilación*. And as the main object of this Royal cédula was the advantage of leaving well determined the northern part, which, upon the re-establishment of the Audiencia of Guatemala, was united to that audiencia, no description was made of the lower part, which had always belonged to the Audiencia of the Confines, for it was not the subject of doubt.

But, although Costa Rica was not named in said Royal cédula, it was comprehended within the clause, “* * * and whatever other islands and provinces there may be on the coast and in the region of the said provinces,” among which was mentioned that of Nicaragua. In ordering the promulgation of the “New Laws” of 1542, which created the Audiencia of the Confines (of Guatemala and Nicaragua), it was provided that it should have under its charge “* * * the Government of the said province and *adjacent* regions,” a phrase similar to that employed in the re-establishment of that Audiencia, in 1568, under the denomination of “Guatemala.”

The Audiencia of Guatemala having been re-established, that of Panama was advised, by Royal cédula of August 12, 1571 (Doc. No. 59), that it must no longer concern itself with the affairs of the former, while the Royal cédula of July 17, 1572 (Doc. No. 61), bestowed upon the Audiencia of Guatemala jurisdiction over the affairs of the Provinces of Nicaragua and Costa Rica.

The affairs of Costa Rica continued to be dependent upon the Audiencia of Guatemala when the *Recopilación de Indias* was published in 1680; and counsel for Colombia resort to the argument that even if Costa Rica had existed legally as a province, the omission of its name in the laws of demarcation of the contiguous audiencias signified its suppression, and that the *Recopilación de Indias* thus abrogated the prior Royal cédulas relating to it.

But although Law 6 does not mention the *Province of Costa Rica*, it includes it between Nicaragua and the divisionary line of the district of the Audiencia of Guatemala, unless it be assumed, as Colombia does assume, that the Government of Veragua, of the Audiencia of Panama, reached as far as Nicaragua. And having proved that that Government did not include that of Costa Rica, which was recognized by the *Recopilación* as a province belonging to the Audiencia of Guatemala, it must be agreed that Costa Rica was not suppressed by Law 6, although it was not expressly mentioned therein.

To the foregoing we must add that the laws of demarcation of audiencias are not laws of creation and suppression of component provinces of their respective districts, but of differentiation of one from another, for the purpose of establishing the external boundaries of the territorial jurisdictions of those audiencias.

Whatever subtleties counsel for Colombia may appeal to in order to show that the Province of Costa Rica came to an end with the publication of the *Recopilación de Indias*, their purpose cannot succeed in the face of the decisive reason that the latter expressly recognizes it and its author provided for its needs as such province.

III.

**COSTA RICA WAS EXPRESSLY RECOGNIZED BY
THE RECOPIACION AS A PROVINCE OF THE
AUDIENCIA OF GUATEMALA OF THE VICE-
ROYALTY OF MEXICO.**

**1. Law 1, Title 2, Book V, of the Recopilación; Its
Importance.**

The Kings of Spain having reserved to themselves the power to fill directly the offices of viceroys, captains-general, presidents and judges of audiencias, and the most important governments, *corregimientos* and *alcaldías mayores*, the Law 1, title 2, book V, of the *Recopilación* enumerated all of these offices with their annual compensations, and submitted them, classified under audiencias, for each of the two viceroyalties.

The enumeration of the offices under the provision of the Crown, in the Viceroyalty of PERU, begins with the *Audiencia of Panama*, in which district it says:

“* * * We have to provide the post of Governor and Captain-General of the Province of *Tierra Firme* and President of the Royal Audiencia for eight years, which has a salary of four thousand five hundred ducats; and that of Governor and Captain-General of the *Province of Veragua*, with one thousand *pesos ensayados* (assayed dollars); the Government of the Island of Santa Catalina, with two thousand pesos; and the *Alcaldía mayor* of San Felipe de Portobelo, with six hundred ducats.”

It then proceeds to speak of the other audiencias of this Viceroyalty, that is to say, those of Lima, Santa Fé, Charcas, Quito, Chile and Buenos Ayres.

Under the denomination of NEW SPAIN, the law enumerates the offices under the provision of the King in the Audiencias of Santo Domingo, Mexico, Guadalajara and Guatemala, in respect to which it says:

“In the district of our Royal Audiencia of *Guatemala*, the post of Governor and Captain-General and President of the Audiencia, for eight years, with a salary of five thousand ducats; that of Governor and Captain-General of Valladolid de *Comayagua*, with two thousand *pesos de minas* (mined dollars); that of GOVERNOR AND CAPTAIN-GENERAL OF THE PROVINCE of COSTA RICA, with two thousand ducats; that of Governor and Captain-General of the Province of *Honduras*, with one thousand *pesos de minas*; that of Governor of *Nicaragua*, with one thousand ducats; that of Soconusco, with six hundred *pesos de minas*, and the *Alcaldías mayores* of Verapaz, Chiapa, Nicoya, etc.”

This law offers an almost complete exposition of the organization of the Spanish Colonial Government, by viceroalties, audiencias, provincial governments and *alcaldías mayores*; it is at once a law of territorial division and one making appropriations.

As it states itself, the law was enacted by “Don Carlos II and the governing Queen, in this *Recopilación*,” in consultation with the Council and upon reports from the Secretaryships of Peru and New Spain. It is, therefore, of great importance as being a faithful expression of the reality of the administrative division at the very date on which the *Recopilación* was published (1680) and as affording a solution for the doubts that might arise from prior enactments in the interpretation of other laws of this Code.

2. This Law Is a Resultant of the History of Costa Rica, Which Always Depended Upon the Audiencia of Guatemala.

The Law I, of title 2, book V, in specifically declaring that the Government and Captaincy-General of the *Province of Costa Rica* belonged to the Audiencia of Guatemala and Viceroyalty of Mexico, not only recognized the existence of that province, but it brought to the *Recopilación* the result of its history, confirming and ratifying such jurisdictional dependency.

(a) *From the Creation of That Audiencia to 1563.*

The importance that was given to primitive Veragua by the *capitulación* of Felipe Gutiérrez and the formation of the dukedom (1534), determined the creation, in 1535, of the Audiencia of *Panama*, or *Tierra Firme*, which was organized, in 1538, by segregating those territories from the Government of the Island of Española and all others discovered toward the south, to which it was impossible for said government to give further attention. The Audiencia of *Panama* was then the only one in existence for the government of the American continent, from the line marking the end of Mexico's territory down to the Strait of Magellan.

By this Veragua depended at first upon the Government of *Tierra Firme*, as the Royal cédula of 1537 declared.

But when that vast government was divided by the so-called "New Laws" of 1542, by the creation of the Viceroyalty of Peru and the Audiencia of the *Confines* (which was established in 1543 and afterwards called

the Audiencia of Guatemala), Costa Rica formed a part of that audiencia, never to be separated therefrom through all the vicissitudes this audiencia underwent while dependent upon the Viceroyalty of Mexico; whereas *Tierra Firme* was made subordinate to the Viceroyalty of Peru by the Royal cédula of 1550, under which it remained permanently after various alterations.

It cannot be successfully maintained that the Veragua which was called Cartago or Costa Rica passed, in 1550, with *Tierra Firme* to Peru, for it is clearly shown by the Royal cédula of incorporation that only Castilla del Oro was in question, and it has been shown that the former continued in the Audiencia of the Confines. It is enough to remember how the latter intervened in the affairs of Costa Rica and how the King addressed himself to it in everything relating to the conquest and government which he entrusted to Ortiz, Cavallón, Vázquez de Coronado, Perafán de Ribera and Artieda. The Royal cédula of August 9, 1561 (Doc. No. 48), denying the claims of the Government of *Tierra Firme* with respect to the Province of Veragua and that of Costa Rica, should be especially borne in mind.

The Audiencia of the Confines disappeared in 1563, having been transformed into another, called the Audiencia of *Panama*, as result of the transfer to that city of the capital of the former. And in that Audiencia of Panama (which, however, must not be confused with the first of that name), Costa Rica continued, with other provinces that had pertained to the Audiencia of the Confines, from which Guatemala had been segregated and to which *Tierra Firme* was incorporated. The Audiencia of *Guatemala* having been

re-established in 1568, and that of *Panama* having been dismembered, Costa Rica followed the former and Tierra Firme remained in the latter.

(b) *From Its Re-establishment (1568) Down to the Promulgation of the Recopilación (1680).*

The Audiencia of Panama objected to being deprived of the jurisdiction which had been segregated from it, and it became necessary for the King, by the Royal cédula of August 1571 (Doc. No. 59), to order that it should not continue any longer to act in matters pertaining to that of Guatemala and to declare, by the Royal cédula of July 17, 1572 (Doc. No. 61), that the affairs of Nicaragua and Costa Rica belonged to the latter.

The Audiencia of Guatemala continued, in fact, to occupy itself with the government of and the administration of justice in Costa Rica, as it had done before its suppression. Thus we see it calling to account Perafán de Ribera, Diego de Artieda, Fernando de la Cueva, Ocón y Trillo and other governors; we see it taking measures concerning allotments of Indians and exemptions from tribute, and intervening in all the other affairs of that province, by virtue of its inherent powers, or by order of the King, until 1680, when the *Recopilación* was published, to say nothing of those acts which are set forth with their dates in the defense of Costa Rica.

The audiencia, however, had to refrain from appointing the Governors of Costa Rica, because the King reserved their appointment to himself, according to the Royal cédula of May 26, 1572 (Doc. No. 60), which he addressed that body; but it did name those officers

ad interim, pending permanent appointments by the King, in the case of Alonso de Anguciana (1573), Velázquez Ramiro (1590), Gonzalo de Palma (1592), Gonzalo Vázquez de Coronado (1600), Arias Maldonado (1662), etc.

And, finally, evidence that Costa Rica depended upon the Audiencia of Guatemala, is found in the protracted proceedings arising out of the plan to aggregate it to the Audiencia of Panama. On September 25th, 1609 (Doc. No. 75), Philip III asked the Audiencia of Guatemala whether it would be desirable to place the Province of Costa Rica, "which is under the jurisdiction of your Audiencia," in the district of that of Panama; Philip IV informs the President of the latter, on October 24, 1623, that he is investigating the matter, and in 1627 and 1628 (Doc. Nos. 235 and 236), he calls upon the Governor of Costa Rica for reports; and Charles II, after having asked the Audiencia of Guatemala for further reports concerning the aggregation of the Province of Costa Rica to that of Panama, declares in Law 1, title 2, book V, of the *Recopilación*, that the Government and Captaincy-General of Costa Rica shall form part of the Audiencia of Guatemala, dependent upon the Viceroyalty of New Spain (Mexico).

The foregoing clearly demonstrates that, after mature reflection and in harmony with its history, the Province of Costa Rica was expressly recognized by the *Recopilación de Indias* as such province and a dependency of the Audiencia of Guatemala.

IV.

INTERPRETATION OF LAW 9, TITLE 1, BOOK V, DECLARING THAT THE WHOLE OF THE PROVINCE OF VERAGUA IS UNDER THE GOVERNMENT OF TIERRA FIRME.

1. It is Not Possible to Refer to the Veragua of 1537, as Constituting the Whole of Veragua.

Law 9, title 1, book V, of the *Recopilación de Indias* (Doc. No. 135), begins by citing as its precedent the Royal cédula issued by the Emperor at Valladolid on March 2, 1537, which has for a caption: "Let the Province of Veragua Belong to the Government of Tierra Firme;" and its text contains the single order: "Let the whole Province of Veragua belong to the government of Tierra Firme."

This word "whole," which does not figure in the heading, and the above reference to the Royal cédula of 1537, constitute the principal basis of Colombia's argument in her effort to maintain that the Province of Veragua to which the *Recopilación de Indias* refers as subordinated to the Audiencia of Panama of the Viceroyalty of Peru, comprised the whole of what was Veragua in the purview of that Royal cédula. In her argument Colombia seeks to make the law say, by its citation and its text, that it restores things to the state in which they were found in 1537 and therefore nullifies everything that was done subsequently to that date.

We begin by making it clear that these citations of cédulas and *pragmáticas* which are seen at the heads or on the margins of the laws in the compilations, only serve to indicate the origin or antecedents of the text;

they form no part of the text. They have, therefore, no virtue as precepts unless they are reproduced in the text in which case their authority is revived. Still, they always supply the historical explanation of the respective laws, although not in every case as their commentaries, since they may be complete negations thereof.

The Royal cédula of Valladolid, of March 2, 1537, is cited once at the beginning of this Law 9, title 1, book V, relative to Veragua, and *again* at the beginning of Law 4, title 15, book II (Doc. No. 106), which deals with the Audiencia of Panama. Are there two cédulas of the same date, or only one? If two, then the one that is cited with reference to Veragua, could not be the one which Colombia defends with so much earnestness; if there is but one, then, since it does not speak of the Audiencia of Panama, the citation of Law 4 can be understood in no other sense than as the authority for the formation of that audiencia.

It is impossible, therefore, to assert successfully that by the mere fact of the citation of the Royal cédula of March 2, 1537, by Law 9 it could re-enact that cédula and abrogate everything that had been commanded subsequently thereto; that law cited the cédula as the organic act of the Province of Veragua, just as another law cited it as a precedent of the Audiencia of Panama.

Let it be observed, furthermore, that that invocation of this Royal cédula by Colombia for the purpose of showing that by virtue thereof the *whole* of Veragua became a single province and belonged to the Government of Tierra Firme, is from every point of view *contraproducentem*. First, because this very Royal cédula establishes *the division* of Veragua into two parts, confirming the creation of the Dukedom of Ve-

ragua with its square of twenty-five leagues, and commanding that such lands as might be left after taking out these twenty-five leagues, should be subject to the Government of Tierra Firme, called Castilla del Oro. Second, because the dukedom granted to Don Luis Columbus by the Royal *cédula* of January 19, 1537, was expressly left subject to the jurisdiction of the Audiencia of the Island of Española. Therefore, when the Province of Veragua was re-established in 1537, the re-establishment did not involve the *entirety* of that province but only that *part* which was left after segregating the square of twenty-five leagues of the dukedom.

In order to defend the integrity of that Province of Veragua which she has dreamed of as belonging to the Government of Tierra Firme, from Castilla del Oro as far as Cape Gracias á Dios, Colombia must begin by getting rid of the Royal *cédula* of 1537, and then rely upon the dispositions which have abrogated it.

We have already seen how the primitive Veragua was broken up, by virtue of its historical evolution and the acts of the Sovereign, into three provinces, each distinct from and independent of the other; the Province of Veragua, properly so-called, and the only one that kept this name, that of Costa Rica, and that which began by calling itself Teguzgalpa. We have seen, also, how from the birth of the Audiencia of the Confines, or Guatemala, down to the time of the *Recopilación*, inclusive, the Province of Costa Rica belonged to it and to the Viceroyalty of New Spain, and remained separated from the Government of Tierra Firme which depended upon the Viceroyalty of Peru. We deem it unnecessary to insist further upon these

propositions after the extended demonstration which we have already made of them; it will be sufficient^a to add this demonstration to the reasons stated, in order to establish conclusively the fact that Law 9, title 15, book V, cannot be interpreted in the sense of referring to the Veragua of 1537 as embracing the whole of the Province of Veragua.

2. Nor is the Hypothesis Admissible that Veragua is a Major and Costa Rica a Minor Province.

Colombia defends herself in retreat, by referring the totality of the Province of Veragua as of the year 1560 and seeking to construct the duality of the Governments of Veragua and Costa Rica, mentioned by the *Recopilación*, by distinguishing them as major and minor provinces.

According to the opinion prepared by one of the eminent counsel, the Royal cédula of July 18, 1560 (Doc. No. 39), reveals the fact that out of ancient Veragua there had been formed two provinces, one a large one which kept the tradition and the name of Veragua, and the other a small one which was subject to the jurisdiction of Nicaragua, this small one being the province called Costa Rica.

In that very Royal cédula, the King specifically declares the division of Veragua into two parts; that entrusted to Francisco Vázquez, with which the Province of Veragua was constituted and of which he was afterwards appointed Governor and Captain-General; and the part confided by commission to Ortiz de Elgueta, which his successors conquered and governed under the name of Costa Rica and which reached as far as the boundaries of the other.

Not because it was indicated that the conquest would be initiated on the side next to Nicoya, or because Ortiz was *Alcalde mayor* of the latter or because of the fact that governors appointed for the former were made also governors of Nicaragua in order to facilitate the conquest, can it be maintained that Costa Rica was reduced to the "little scrap" of which the Memoranda of Colombia speak so disparagingly, or that Costa Rica can be confused with Nicoya or Nicaragua. In our opinion we have made sufficiently clear the manner in which the Province of Costa Rica was formed, from the commission given to Ortiz de Elgueta and transmitted to Cavallón, and it would seem to be unnecessary to return to that historical aspect.

On the other hand, the idea of a distinction into major and minor provinces is not applicable, for according to Law 1, title 1, book V, of the *Recopilación de Indias* (Doc. No. 131), the designation of *major* is only given to the districts of the audiencias, within which were found the *minor* ones, such as the governments, *alcaldías mayores*, etc., and Veragua never was an audiencia, neither was Costa Rica.

But *both were provinces*, in the category of governments and captaincies-general, as they are expressly considered by Law 1, title 2, book V, of the *Recopilación*. And as the salaries are in proportion to the rank of the offices, and the latter with the character or importance of the provinces, let us look into the assignment of salaries made by this same law: Governor and Captain-General of the Province of Costa Rica, 2,000 ducats; Governor and Captain-General of the Province of Veragua, 1,000 *pesos ensayados*; Governor of Nicaragua, 1,000 ducats, and *Alcalde mayor* of Nicoya, 200 ducats.

It will be noted that the salary of 2,000 ducats assigned to the Governor and Captain-General of Costa Rica is the same that was provided for that office by the Royal cédulas of 1573 and 1574, which constituted the *capitulación* and appointment of Diego de Artieda—a new fact, by the way, in favor of its efficacy. And if this salary be compared with the others mentioned, how can it be imagined that the Government and Captaincy-General of Costa Rica was of less importance than that of Veragua, or that it could have been made dependent upon, or, subordinated, to the mere Government of Nicaragua or the *Alcaldía mayor* of Nicoya?

Nor does the whole of the Province of Veragua to which Law 9 alludes, constitute the whole of this supposed major province of 1560, with the exception of the “little serap” (*le petit lambeau*) adhering to Nicoya or Nicaragua.

3. Explanation of This Law, by Making it Refer to the Province Emanating From the Dukedom.

In our opinion Law 9, title 1, book V, can only be interpreted by construing it as referring to the Province of Veragua into which the dukedom was converted, because this interpretation is based on fact, on history, on the reason for its being included in the *Recopilación de Indias* and on its harmony with other laws of the same.

The only Province of Veragua in existence when the *Recopilación* was published, in 1680, was the one definitively constituted in 1560, proceeding from the suppressed ducal seignory, and differing from the remainder of the ancient Royal Veragua. This was

called Costa Rica in the time of Sánchez de Badajoz (1539); Cartago and Costa Rica in the time of Diego Gutiérrez (1540); Cartago or New Cartago and Costa Rica in that of Cavallón (1561), and *Costa Rica* only upon being constituted as a province on the occasion of the appointment of Governor of Vázquez de Coronado (1565); the province retained that name after the separation therefrom of Teguzgalpa when the government of Diego de Artieda was created (1573), and until it ceased to be a Spanish province; and it is not to be imagined that, upon the publication of the *Recopilación de Indias*, its laws, could refer to any Provinces of Veragua and Costa Rica other than those that then existed, abandoning reality and going back over the course of history in order to confuse them with the primitive Veragua of the coast discovered by Columbus, or of the *capitulaciones* with Nicuesa (1508), or with Felipe Gutiérrez (1534).

Colombia places a limit on this historical retrogression at March 2, 1537, and bases her arguments solely upon the citation made in Law 9, giving to those citations which only indicate origins, a value they do not possess; but without noting that it was impossible to revive the totality of the old Veragua by the enactment of the Royal cédula of that date, since this Royal cédula sanctioned its division into two parts: Royal Veragua and Ducal Veragua.

It is just because this decision was sanctioned in the Royal cédula of March 2, 1537, that we can explain its citation in Law 9, understanding that it mentions that division *as a historico-legal precedent of the Province of Veragua, derived from the dukedom*, which was treated in the text, just as it also cited that cédula as

an antecedent to the formation of the Audiencia of Panama or Tierra Firme.

Let this citation be disregarded, as being a mere historical reference, and what remains to Colombia wherewith to maintain that the *Recopilación de Indias* abrogated everything subsequent to said Royal cédula? The text of the law, far from enacting the Royal cédula, differs therefrom as regards the argument of Colombia, since it speaks of totality and not of division, as does that cédula.

Why was such a text written into the *Recopilación de Indias*? For the purpose apparent in other similar cases—that of explaining the territorial division and settling the doubts that might be raised concerning the respective jurisdictions.

Title 1, book V, which treats of “the districts, division and aggregation of the Governments,” begins, in its Law 1, by laying down the principle that governors shall preserve the limits of their districts, continues with the explanation of the dependency in which certain audiencias are found in respect to the two vice-royalties, and then defines the dependency of certain governments with respect to the audiencias.

Because of the fact that the *Audiencia of Panama* went through so many alterations, and was contiguous with the Viceroyalty of New Spain and with other audiencias of the Viceroyalty of Peru, it was the one to which the most attention was given, particularly with reference to its Province of Tierra Firme.

Law 2 says (Doc. No. 132): “The Province of Tierra Firme belongs to the Government of Peru.” And to the end that there might be no doubt remaining, by reason of its having figured as a part of the Audiencia of the Confines, Law 7 (Doc. No. 133) reproduces the

Royal cédula of 1550, saying that “* * * the Province of Tierra Firme, called Castilla del Oro, shall belong to the Provinces of Peru and not to those of New Spain.”

Law 8 (Doc. No. 134) thereupon indicates the eastern limit on the north with the Audiencia of Santa Fé, to which the Province of Cartagena belonged, and declared that the back portion of the Gulf of Urabá belongs to Tierra Firme. And finally, in order to fix the western limit and banish all doubt of the fact, that, according to Law 7, the Viceroyalty of Peru and Audiencia of Panama should terminate with Castilla del Oro, Law 9 provides: “* * * Let the whole Province of Veragua belong to the Government of Tierra Firme.”

This Law, then, forms a harmonious whole with these other laws of the same title, and responds to the same idea that they do. And it is in harmony also with Law 1 of title 2 (Doc. No. 136), which follows thereafter, and includes the Province of Costa Rica in the Audiencia of Guatemala and Viceroyalty of New Spain, in conformity with the resolution taken by Charles II, when the *Recopilación* was published, after the long proceedings which arose out of the plan to include that province in the Audiencia of Panama.

There cannot, then, be the slightest doubt that the Province of Veragua, to which Law 9 referred, was that which arose out of the dukedom, and this is even confirmed by the same citation of the Royal cédula of 1537, relative to the dukedom of which it was formed.

But if this is the simple and clear explanation of Law 9, the heading of which says that the government of the Province of Veragua belongs to Tierra Firme,

how is the placing of the word "whole" at the beginning of its text to be explained?

It may be redundancy, which is frequently made use of to give more force to expression and to leave a phrase more complete; but we think there were special reasons for saying "the whole Province of Veragua."

The Law could not say "the whole Dukedom of Veragua," since it had been suppressed; neither could it refer to the boundaries of the latter, because they had not been actually traced; nor were they in fact the imaginary boundaries mathematically fixed by meridians and parallels. As to the contiguous provinces, they had been altered in one way or another, and there were also intermediate spaces which had been the object of disputes, and others which at any moment might have given rise to controversy. It is enough to remember that from the meridian of the Belén river, the eastern boundary of the dukedom, as far as Castilla del Oro, which was fixed as the limit of the government of Felipe Gutiérrez (1534), there were territories which were not included in the ducal demarcation; that the demarcation of Ortiz de Elgueta, Cavallón and Vázquez de Coronado could lead to the belief that the boundaries of their government reached as far as the line between Nombre de Dios and Panama (1559-1565); and that the demarcation of Artieda (1573) fixed the limits of Costa Rica "as far as the *Province* of Veragua," making it comprise the Bocas del Drago on the north and the Valleys of Chiriquí on the south.

So that even if the Province of Veragua was formed with the territory of the Dukedom of Veragua, it did not coincide with its mathematical limits and it contained parts which were not within their geometrical

configuration. And it was in our judgment to avoid doubt about the former dukedom, as well as to confirm the solutions to doubts which had been raised regarding the existence of the province, that the law said: "The whole of the Province of Veragua * * *," which was equivalent to saying, "all that may be or is the Province of Veragua," thus sanctioning its existence with the *whole* extension that it then had.

4. Case of Supposed Contradiction of This Law With Others.

The result of the foregoing explanation is that Law 9, title 1, book V, is in perfect harmony with the other laws of the *Recopilación de Indias*; but if it be still insisted that this law resuscitated the ancient Veragua by re-enacting the Royal cédula of 1537 and abrogating all provisions subsequent thereto, under which supposition that law would be found to be in contradiction to others of the laws mentioned, we would suggest the following to show how this contradiction might be settled.

It is not unusual in the compilations to find laws which are contradictory, because they have been collected from different periods without due attention always to comparing them, or because of the lack of antecedents essential to their proper interpretation. So that, when it is sought to settle conflicts between laws or parts of a law in a certain compilation, which were originally enacted at different dates, failing any other solution, it may be taken as a rule that the earlier law shall be considered as amended or abrogated by the later one, as the case may be.

Following this criterion, and supposing that Law 9, title 1, book V, could have resuscitated the Government of Tierra Firme of 1537 and included therein all Veragua, ducal and not ducal, that law must be considered as abrogated by Law 7 of the same title; this is the Royal cédula of 1550, according to which only Castilla del Oro was incorporated into the Viceroyalty of Peru, and all of Veragua was left in the Audiencia of the Confines and Viceroyalty of New Spain. And although the effort is made to negative the existence of the Province of Costa Rica by pointing out the omission of its name in Law 6, title 15 of book II (Doc. No. 107), and by saying that that law was enacted by Philip IV, the reply is instantly forthcoming that the law was modified by his successor, Carlos II, who decreed Law 1, title 2, book V (Doc. No. 136), which included the Government and Captaincy-General of the Province of Costa Rica in the Audiencia of Guatemala and Viceroyalty of New Spain.

V.

VALIDITY OF THE ROYAL CEDULAS WHICH ARE DEMARCATORY ACCORDING TO THE RECOPIACION.

1. Principles Established by the Recopilación in Regard to the Validity of the Royal Cédulas Prior and Subsequent Thereto.

Counsel for Colombia assume that the rights of Costa Rica are supported only by Royal cédulas, and then deny that those cédulas possess any legal force, on the ground that the *Recopilación de Indias* rendered them wholly innocuous.

But it is not a fact, as we have already indicated in speaking of the *Recopilación* in general, that the latter abrogated all the prior dispositions. The Royal cédula of May 18, 1680, which authorized the publication of that code and prefaced it, says: “* * * leaving in force and effect the Cédulas and Ordinances given to our Royal Audiencias, in so far as they are not contrary to the Laws herein.”

Law 1, title 1, book II (Doc. No. 92), provides that whenever the necessity may arise for making new laws reports shall be made to the Council of the Indies and it declares that the ordinances enacted for cities and communities, as well as those made for the welfare of the Indians and for good administration, shall continue without alteration, provided they be not contrary to the laws. And Law 2, of the same title and book (Doc. No. 93), directs that in matters not covered by the laws of the *Recopilación* “or by Cédulas, *Provisiones* or Ordinances issued for the Indies and not revoked, or by those which are promulgated by our order,” the laws of Castile shall be enforced.

By Law 2, title 2, book II (Doc. No. 94), the Council of the Indies is given supreme jurisdiction of all the western Indies, and empowered it to “make, with our advice, the general and special Laws, Pragmatics, Ordinances and *Provisiones* * * *;” and the Council is further instructed that those “* * * provisions and commands shall be in everything and by everybody complied with and obeyed in all places.”

In this way the *Recopilación de Indias* laid down these principles: First, that Royal cédulas which are not in contradiction to its laws shall continue in force; and second, that all Royal cédulas thereafter issued

should attain to the dignity of Laws, if enacted by the Council of the Indies, by and with the advice of the King.

2. Legality of Territorial Division and the Boundaries of Districts.

This is perfectly well settled by two laws decreed by the very authors of the *Recopilación de Indias*.

Law 1, title 15, book II, of Philip IV (Doc. No. 105), after explaining how all the discoveries of the Indies were divided into twelve audiencias, the districts of which were subdivided into governments, *corregimientos* and *alcaldías mayores*, which were subordinate to those audiencias, and “* * * all to our Supreme Council of the Indies, which represents our Royal Person,” says: “* * * We establish and command, that now and until We otherwise order, the said twelve Audiencias shall be retained, and that within the district of each one the *Governments, Corregimientos* and *Alcaldías Mayores* which *they now have* shall be *preserved*, and that *no change be made* therein, without our *express* order or that of our said Council.” Then follow the laws making the demarcation of audiencias.

Law 1, title 15, book II, of Philip IV (Doc. No. 105), after setting forth the advantages of the differentiation of the districts and territories, says: “We order and command the Viceroys, Audiencias, Governors, *Corregidores* and *Alcaldes mayores* to keep and observe the *limits* of their jurisdictions, as *they may be fixed* by the *Laws* of this book, the *Titles* of their offices, the *Provisiones* of the superior Government of the provinces, or by *use* and *custom* legitimately introduced.” Then follow the laws designating the dis-

tricts of various governments, among which are found those of the Audiencia of Panama.

So, then, the *Recopilación de Indias* recognized the existing legality of the demarcations at the moment it was published; and it not only recognized it, but it confirmed it, in so far as it was not in contradiction with its laws, and even prohibited any change therein without express order of the King or of the Council of the Indies.

These provisions relating to territorial division were in accord with the general provisions concerning the value of Royal cédulas prior and subsequent to the *Recopilación*, and they all sanction the validity of the Royal cédulas that established boundaries. Enactments prior to the *Recopilación*, continued in force not only by reason of being Royal cédulas which did not contradict that code, but because they established the *status quo* of territorial division; those that were issued afterwards were required to be by the express order of the King or the Council of the Indies, in order to modify the demarcations existing in 1680.

The only condition that qualified the efficacy of the Royal cédulas demarcatory of boundaries, and determining the legal status of 1680, was that they should not be in contradiction to what was provided by the laws contained in the *Recopilación*. But as these laws only indicated in a general way the boundaries of the audiencias and solved various doubts concerning the inclusion of certain provinces therein, the Royal demarcatory cédulas which specified those boundaries and indicated those of the governments—without being opposed to the general demarcation—beside being valid, had the importance of being *complementary* to the *Recopilación* itself.

3. Special Consideration of the *Capitulaciones*.

The Royal *cédulas* approving the *capitulaciones* for the discovery and settlement of territories, being Royal *cédulas* which were not opposed to the laws of the *Recopilación*, and having produced the legal status of the demarcations, unite the conditions requisite to their validity and efficacy in the matter of territorial division; they disregard the personal aspect of those *capitulaciones* and consider them in their character as demarcatory orders. But Counsel for Colombia only see in them a *contract*, of no consequence in public law; we are therefore impelled to a special consideration of the subject.

(a) *Juridical Character of the Capitulaciones.*

Counsel for Colombia say:

“The jurisdictional demarcations, the determination of territories submitted to Viceroy, Governors or Audiencias, were never made by means of *capitulaciones* or contracts between the State and private individuals, but by *Royal cédulas*, Royal orders, acts of Public Authority and of the sovereignty of a unilateral character, such as the exercise of dominion over the territory of the Nation.”

And, generalizing the question, they add:

“It is a principle of Public Law, inherent in the very essence of the sovereignty of the State, that the territorial division shall be a matter submitted directly to the decision of the sovereign. When the sovereignty is exercised over the national territory, it is manifested by acts

of Public Authority, in conformity with the constitution of each State * * *, but to no one acquainted with the law would it occur that the concessions of the State to its subjects for the exploitation of territories or regions, their cultivation or their administration under this or that form, implied changes in the political and civil jurisdiction."

In the first place, it may be said, in reply to these assertions, that a *capitulación* presents two aspects: One of *personal* interest, that of the individual in whose favor it was granted, and the other one of *public* interest, that of the discovery, the colonization and administration of the territory designated—a duality in aspect which also characterized the titles of appointment to governorships. The personal aspect disappeared with the individual or the one who held the granted right; the public aspect persisted, the territorial entity being left with the boundaries imposed upon the contracting party or governor, as long as these limits were not changed by any subsequent provision.

Considering the *capitulación* as a *compact*, it was in effect a bilateral act, which produced reciprocal obligations between an individual and the Crown. But prior to the contract and above its capacity as a contract, it had the character of a *unilateral act of sovereignty*, since by making use of it the Monarch provided this mode of discovering, colonizing and administering a certain territory that he marked out, approved the *capitulación* by Royal *cédula*, and when its term ended, he appointed within that demarcation another person to continue its administration. Thus were formed the different territorial demarcations which, under the

names of governments, *corregimientos* and *alcaldías*, went to fill out or complete the general demarcations of the audiencias, under a régime of territorial division established by the Sovereign. The boundaries prescribed in the *capitulaciones* were the boundaries of governments, and the boundaries of the governments were respected and confirmed by the *Recopilación*.

Even considering the *capitulaciones* as contracts, they can never be compared with those of private law; they must come under the category of contracts for public works and services or of administrative concessions. It is by the use of its sovereignty, and in no sense by abdicating it, that the State undertakes in this manner to perform services and works or to utilize the public domain; and in doing so, it imposes as conditions those which belong to the nature of the concession, work or service. The boundaries of the land designated to the contracting party or the concessionaire subsist for the State as long as it does not modify them. Who doubts, for example, when a railway line granted to a corporation reverts to the State, that it will have the same delimitation that it had previously?

Neither can there be any successful comparison between *capitulaciones* and such administrative acts; these taken altogether constitute a *system of colonization and government* which Spain employed in her exploration, settlement, pacification and government of those vast territories—a system responding to needs that are not felt in countries completely formed to which a law of territorial division is given.

The *Recopilación de Indias* recognized and confirmed the result of this system which had been employed, that is to say, the *status quo* of the demarcations that had

been made at the time it was published; and far from disregarding the *capitulaciones* it takes them up especially in its book IV, and gives to them the characteristics of a most singular institution of Public Law, based on the sovereignty.

(b) *The Capitulaciones in the Light of Book IV of the Recopilación.*

Title 1, of book IV treats of "the discoveries" in general, and lays down the principle that no discovery or settlement may be made at the expense of the King, unless the latter expressly authorizes it (Law 17; Doc. No. 115).

It provides how the discoveries are to be granted; no new grants were to be made unless the prior ones should have been carried out and unless the King should be consulted; those to whom the right to make such discoveries had been granted were to qualify as men in whom reliance could be placed; and the contracting parties were to be required to observe the laws and instructions, to give an account of their work and to keep within the boundaries indicated; in the event of any doubt or question concerning *the boundaries* established by the *capitulaciones* they were to be determined by the respective audiencia, and in case two audiencias should be interested in the same matter and fail to agree, then the matter was to be determined by the Council of the Indies (Laws 1, 2, 4, 11 and 14; Doc. Nos. 108, 109, 110, 113 and 114).

It directs that in all *capitulaciones* the word "*conquest*" should be omitted and that "*pacification and settlement*" be used instead (Law 6; Doc. No. 111),

and authorizes the explorers to give names to the territories, rivers and mountains they might discover and to the cities they might establish (Law 8; Doc. No. 112).

Title 2 concerns itself with discoveries by sea; it requires special permission to undertake them (Law 1; Doc. No. 117); it imposes the condition of providing at least two ships (Law 2; Doc. No. 118); and cautions the explorer that in making a landing upon any territory he must take possession in the name of the King (Law 11; Doc. No. 119).

Title 3 treats of discoveries by land; it directs that an inquest be taken before making the *capitulaciones* (Law 1; Doc. No. 120) and fixes the powers of those who enter into them. Among these are the power to appoint *judges* in the territory delimited, which includes the right to dismiss therefrom those who were already there, the power to divide this territory into districts, to appoint *alcaldes* therein, to make ordinances for its proper administration, etc. (Laws 13, 16 and 17; Doc. Nos. 123, 125 and 126).

Both in this title, and in the three that follow, which speak of the pacifications of the settlements, and of the explorers, pacificators and settlers, various rights are stated as pertaining to the holders of *capitulaciones*, such as the erection of forts, the establishment of cities, the exercise of jurisdiction during their lives and its transmission to their heirs, the holding of the title of *alcalde mayor*, if their territory borders with that of viceroys or audiencias, and even that of Marquis if it were an *Adelantado*.

The Crown imposed obligations and restrictions upon them in connection with the settlement and paci-

fication of the country; Law 8, title 4 (Doc. No. 129), for example, prohibited the discoverers from making war on the Indians unless absolutely necessary, or doing any other harm or injury, or taking anything from them without payment therefor.

All of this shows very clearly the very special nature of the *capitulaciones*, which were a real *institution of public law*, under the shelter of which were formed the provinces and their districts. The boundaries fixed by the Council of the Indies in the *capitulaciones* granted by the King and placed under the protection of the *audiencias*, were also, therefore, boundaries of public law.

Law 7, title 7 (Doc. No. 130), provides that “* * * the district and territory which may be granted by *capitulación* for settlement,” shall be allotted by first holding out the town plots, commons and pasture lands for the public, and then separating the remainder into four parts, one for the founder and the other three parts for equal division among the settlers. The demarcation thus made, it created rights in favor of the *settlement* which were not extinguished with the disappearance of the founder.

And, finally, the *Recopilación* declared the *capitulaciones* to be in force provided they were not opposed to it (Law 18, title 1, book IV; Doc. No. 116), as follows:

“We order and command that all discoveries and pacifications, and all *capitulaciones* and writings which may have been made concerning them, are to be suspended if they are or may be *in contravention of the Laws of this book*; and that in all which may be made these Laws shall be observed and executed, without exceeding in whole or in part.”

(c) *Capitulaciones Originating the Provinces of Veragua and Costa Rica.*

By virtue of such *capitulaciones* the Provinces of Veragua and Costa Rica began to take legal form according to the general system of that period.

The Dukedom of Veragua had its birth, in 1536, under the arbitral settlement of a suit growing out of the *capitulaciones* made with Christopher Columbus in 1492. When the dukedom was suppressed by agreement of Don Luis Columbus with the Council of the Indies, in 1556, its territory was granted by *capitulación* to Francisco Vázquez, who was thereunto authorized by the Royal cédula of 1557; and Philip II erected it into a province when he appointed this same Francisco Vázquez as Governor and Captain-General by Royal cédula of August 20, 1560.

Ancient Veragua having been divided into two parts by the Royal cédula of March 2, 1537, in consequence of the creation of the dukedom, the King disposed of the remaining part by giving it to Diego Gutiérrez in the *capitulación* and Royal cédula of November 29, 1540; that instrument fixed as the eastern boundary the meridian that passed along the end of the twenty-five leagues of the dukedom, starting from the meridian of the Belén river. If Colombia denies this Royal cédula and goes back to that of 1537, she must recognize that the remaining part to which this latter referred was the demarcation given by *capitulación* to Felipe Gutiérrez in 1534 and then existing; according to this demarcation the territory that later was to become Costa Rica, reached as far as the limits of Castilla del Oro, which had been given to Pedrarias Dávila

and Pedro de los Ríos, subject to the rights of Columbus.

The personal rights of Diego Gutiérrez in the *capitulación* of 1540 having been extinguished, the exploration and settlement of Costa Rica was made by order of the King *without capitulaciones*, but under the commission given to Ortiz de Elgueta; and the province of that name was constituted in the form of a government and captaincy-general when Vázquez de Coronado was appointed to fill those offices in 1565. The *capitulación* of Artieda, of December 1, 1573, separated the northern part, with which the Province of Teguzgalpa was formed later on by the *capitulación* of Diego López of 1576, and it left the Province of Costa Rica definitively bounded.

It is important to note that the *capitulaciones* of Diego Gutiérrez, of 1540, and of Artieda, of 1573, were approved *directly* by the King in Royal cédulas and by accord with the *Council of the Indies*, thus combining *all the requisites* which the *Recopilación de Indias* demands for their validity and continuance in force.

It cannot be said that these *capitulaciones* expired with the death of the persons with whom they were made, for the demarcations made by the King always remained and the *boundaries fixed by them* were those that limited the jurisdiction of the governors who were afterwards appointed, those preserved by the superior authorities in maintaining such governors in their rights, and those sanctioned by use and custom—those in fact which the *Recopilación* commands to be respected and kept, as stated in Law 1, title 1, book V (Doc. No. 131).

For the reasons above stated, in all the boundary questions of the Spanish-American Republics, the

value of *capitulaciones* has been recognized as decisive of territorial divisions; the extinction of the rights of the holders produced no effects on those divisions. This has been demonstrated in the controversies and litigations between Colombia and Venezuela, Peru and Bolivia, Peru and Ecuador, Chile and Argentina, Argentina and Brazil, etc.

In the boundary question between *Honduras* and *Nicaragua*, which was decided by the King of Spain in 1906, the *very same counsel who defended Colombia against Costa Rica* not only recognized the value of *capitulaciones*, but they invoked those here cited in support of the rights they were then defending, as we have heretofore stated; Señor Maura for instance, said in defense of *Nicaragua*, that the Diego Gutiérrez *capitulación* of 1540 defined the eastern limit of Honduras and that the Artieda *capitulación* of 1573 clearly distinguished Costa Rica from Nicaragua; and Señor Silvela, in defending *Honduras*, asserted that this *capitulación* with Artieda DEFINITELY FIXED THE LIMITS OF COSTA RICA.

4. Unilateral Acts of the Crown in the Unquestionable Exercise of Sovereignty, and Titles of the Governors; Final Deductions.

Although the Royal cédulas approving the *capitulaciones* were acts of pure sovereignty, as we have demonstrated, it is important to remember that the Crown constituted the Provinces of Veragua and Costa Rica by unilateral acts of unquestionable sovereign power.

Philip II. by himself and without contracting with anyone, marked out the Province of Costa Rica in the

directions given by Royal cédulas of December 13, 1559, and February 23, 1560, to Ortiz de Elgueta, who was to explore, settle and govern it; and he transmitted this commission to the Licentiate Cavallón in the same terms by Royal cédula of February 28, 1561, in which he charged the Audiencia of the Confines that, if Cavallón did not accept, it should appoint a judge or some other person to carry it out. The boundaries given to Ortiz de Elgueta and to Cavallón were the same as those stated in the appointment of Vázquez de Coronado as Governor of Costa Rica by Royal cédula of August 7, 1565.

Colombia will not be able to deny that these Royal cédulas were unilateral acts of the Crown, expressions of the purest sovereignty; indeed, were they preferred to the *capitulación* of Artieda it becomes evident that Costa Rica could be understood as reaching as far as the cities of Nombre de Dios and Panama.

The Royal cédulas in which audiencias were created and suppressed, in which Costa Rico was declared to be included in the Audiencia of the Confines, or Guatemala, and by which, through that audiencia, questions were determined relating to its administration—all these were also acts involving the unquestionable exercise of sovereignty; and particularly in that category were the cédulas making appointments of governors.

The titles issued to governors are of very great importance in this connection, and for two reasons: as Royal cédulas confirmatory of the demarcation made in the *capitulaciones*, and as means of proof expressly recognized by the *Recopilación* in the matter of boundaries.

Let us remember that under Law 1, title 1, book V, the audiencias, governors and other authorities, must

keep the *boundaries* of their jurisdictions, "as they may be fixed by Laws of this Book, the Titles of their offices, etc.," the *Titles of the Offices* taking therefore the first place, as matter of proof, immediately after the laws; and we will now enumerate the titles of the offices of the Government of Costa Rica, from the time that the distinction was initiated in Veragua (Royal and Ducal), confining ourselves simply to the principal ones and their enumeration only, since their history has been fully written.

1. Title of Governor granted to Felipe Gutiérrez, by Royal cédula of February 6, 1536 (Doc. No. 9) in consequence of the approval of his *capitulación* of 1534; by that instrument there was placed under his administration the whole territory, subject to the rights of Columbus, as far as Castilla del Oro, the boundaries of which were those assigned to Pedrarias Dávila and Pedro de los Ríos.

2. Title of Governor granted to Diego Gutiérrez, by Royal cédula of December 16, 1540 (Doc. No. 19), in consequence of the approval of his *capitulación* of November 29, giving him the administration of the Province of Cartago, from the Río Grande west of Cape Camarón as far as the limit of the dukedom, where terminate the twenty-five leagues granted to Columbus, starting from the meridian of the Belén river.

3. Royal cédulas of January 11, 1541 (Doc. No. 20), directing that these limits be respected and observed by all the governors of the Indies.

4. Title of Governor granted to Juan Vázquez de Coronado, by Royal cédula of April 8, 1565 (Doc. No. 52), without *capitulación*, giving to him the administra-

tion of the Province and territory of Costa Rica, with all its jurisdiction.

5. Royal Cédula of August 7, 1565 (Doc. No. 54), directed to the same Vázquez de Coronado, Governor and *Adelantado* of the Province of Costa Rica, declaring that this province comprised the territory from Honduras and Nicaragua “* * * on the side of the cities of Nombre de Dios and Panama, between the South Sea and that of the North,” in the same terms in which the demarcation assigned to Ortiz de Elgueta was fixed.

6. Title of Governor granted to Perafán de Ribera, by Royal cédula of July 19, 1566 (Doc. No. 56), without *capitulación*, giving to him the administration of the Province of Costa Rica, “* * * in the matters which it has been customary for the Governors who have been up to this time in the said province to conduct.”

7. Title of Governor and Captain-General granted to Diego de Artieda, by Royal cédula of February 18, 1574 (Doc. No. 63), in conformity with that of December 1, 1573, approving his *capitulación* and giving to him the Government and Captaincy-General of the Province of Costa Rica, which it says extends from the Desaguadero as far as the Province of Veragua, including in Costa Rica the Valleys of Chiriquí on the south and the Bocas del Drago on the north. The latter denomination embraced the Bay of Almirante and the Lagoon of Chiriquí, in which region he was directed to establish a city; this he did, giving to the city the name of Artieda.

8. Royal cédula of December 29, 1593 (Doc. No. 70), giving the government of the Province of Costa Rica,

with *capitulación*, to Don Fernando de la Cueva.
 “* * * as it was held by Diego de Artieda Chirino.”

The province having been bounded definitively by the Royal cédulas of 1573 and 1574, the appointments of governors subsequent to Artieda and Cueva were conferred with like jurisdiction. We have seen how the Audiencia of Guatemala filled those offices *ad interim* and now we will add that the Crown continued to exercise its rights to appoint their proprietors.

In fact, after Cueva, the Crown did appoint, as Governors and Captains-General of this Province of Costa Rica, Juan de Ocón y Trillo, in 1603; Juan de Mendoza, in 1612; Alonso del Castillo, in 1618; Juan de Echáuz, in 1622; Juan de Villalta, in 1629; Gregorio de Sandoval, in 1634; Juan de Chaves, in 1644; Juan Fernández Salinas, in 1650; Andrés Arias Maldonado, in 1655; Juan López de la Flor, in 1663; Juan Francisco Sáenz, in 1673, and Miguel Gómez de Lara, on August 7, 1680—that is, two months after the Royal cédula which sanctioned the *Recopilación* (May 18, 1680).

In the titles of these appointments no boundaries were assigned to these Governors and Captains-General of Costa Rica that were distinct from those established by the demarcation of Artieda. And if the Monarch who published the *Recopilación de Indias* recognized in that code the existence of the Government and Captaincy-General of Costa Rica and directed that the boundaries stated in the Titles of the Governors must be respected, is the same one who appointed Governors and Captains-General of Costa Rica (Sáenz and Lara), before and after sanctioning it, without modifying the traditional boundaries clearly

established in prior titles, counsel for Colombia show much temerity in disregarding not only the boundaries mentioned, but the very existence even of that province.

Let us conclude, then, by affirming that the *Recopilación de Indias* respected and confirmed the existence of the Province of Costa Rica, with the demarcation established by the Royal cédulas of December 1, 1573, and February 18, 1574.

PART THIRD

Costa Rica Continued in the Same Legal Status of Differentiation From Veragua From the Recopilacion Down to the Independence.

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I.

FROM THE RECOPILACION (1680) TO 1803.

1. Creation of the Viceroyalty of Santa Fé and Vicisitudes of the Audiencia of Panama, Until Its Suppression (1717 to 1751).

In the XVIIIth century the territorial division established by the *Recopilación de Indias* was modified, by the creation of two more viceroyalties, that of Santa Fé and that of Buenos Aires.

The *Viceroyalty of Santa Fé*, or of New Granada, was created by decree of the King and Royal cédula of May 27, 1717 (Doc. No. 155), recasting in the Audiencia of Santa Fé the Audiencias of Panama and Quito, all of which depended upon the Viceroyalty of Peru, and adding the *Comandancia* of Caracas, which belonged to the Audiencia of Santo Domingo. There was placed at the head of this new circumscription a viceroy, who was to reside in the city of Santa Fé and who should be Governor, Captain-General and President of the Audiencia of that name, " * * * in the same

manner as are those of *Peru* and *New Spain*, and with the same powers."

This viceroyalty, not having produced the results expected of it, was suppressed a few years later, in 1723, and the Audiencia of Panama, which had been suppressed when it was formed, was re-established in the latter year.

But in view of the claims of New Granada and of what was proposed by the Council of the Indies, the King provided for the re-establishment of the viceroyalty, by Royal *cédula* of August 20, 1739 (Doc. No. 163), which reads as follows:

"I have resolved to establish anew the Viceroyalty of the New Kingdom of Granada and have appointed therefor the Lieutenant-General Don Sebastián de Eslava * * *, being also President of my Royal Audiencia of the city of Santa Fé in said New Kingdom of Granada and Governor and Captain-General of the jurisdiction thereof and *provinces that have been added thereto*, which are: that of *Panamá* with the territory of its Captaincy-General and Audiencia, that is to say those of *Portobelo*, *Veragua* and *Darién*; those of Chocó, Kingdom of Quito, Popayán and Guayaquil * * * the Audiencias of Panama and Quito to continue and subsist as they are, with the same subordination and dependency from this Viceroy as the others have that are subordinated to the Viceroyalties of Peru and Mexico, with regard to their respective Viceroyalties."

Within the new viceroyalty and under the dependency of its viceroy, he established three *Comandancias generales*: those of Panama, Cartagena and Caracas.

The Audiencia of Panama, then, passed from the Viceroyalty of Peru to that of Santa Fé. But it was *suppressed* later on, by the Royal cédula of July 17, 1751 (Doc. No. 168), because of the small amount of business it was called upon to transact, the many conflicts it produced and the decadence of its provinces. The King directed that all the political and military matters of the City of Panama and Kingdom of Tierra Firme should be left in charge of a governor and lieutenant-general "upon the same footing as the Governors of Cartagena and Veracruz serve," under the jurisdiction of the Audiencia of Santa Fé.

2. The Province of Veragua Passed Into Dependence Upon the Viceroyalty and Audiencia of Santa Fé; Costa Rica Continued Dependent Upon the Audiencia of Guatemala of the Viceroyalty of Mexico.

The Viceroyalty of Santa Fé having been created and the Audiencia of Panama suppressed, the *Province of Veragua* passed, together with that of Tierra Firme, Portobelo and Darién, as the said Royal cédula of 1739 expressly states, into dependence upon the Viceroyalty and Audiencia of Santa Fé, or upon the New Kingdom of Granada, and so remained until the independence.

On the other hand *the Province of Costa Rica*, which, from the creation of the Audiencia of the Confines, or Guatemala, formed part of it, continued to depend upon the Audiencia and Captaincy-General of Guatemala, of the Viceroyalty of New Spain (Mexico), until its colonial emancipation.

This is clearly shown by the fact that the Audiencia of Guatemala continued, as it did before the *Re-*

copilación de Indias, to act, in all the affairs of Costa Rica, as the superior of its governors and to receive the communications and orders of the King for their discharge, as appears from the numerous cases cited in the documents submitted in this litigation.

And this is corroborated by the fact that the *Audiencia of Guatemala* constantly filled the offices of governor and captain-general of Costa Rica, *ad interim*, until the Crown made the appointments. It was in this temporary fashion that the Audiencia of Guatemala appointed, as Governors and Captains-General of Costa Rica, Diego de Herrera Campuzano (1704), José Antonio Lacayo de Briones (1712), Pedro Ruiz de Bustamente (1716), Francisco Carrandi (1736), Francisco de Olachea (1730), Luis Díez Navarro (1747), Francisco Fernández de la Pastora (1754), José González Rancaño (1757), Francisco Javier de Oriamuno (1763), Juan Flores (1781), José Antonio Oriamuno and Juan Martínez de Pinillos (1789).

3. The Crown Continued to Appoint Governors and Captains-General of the Province of Costa Rica.

Charles II who, *before* the publication of the *Recopilación*, appointed Juan Francisco Sáenz as Governor and Captain-General of Costa Rica, and Miguel Gómez de Lara *after* he gave his royal sanction to that code, appointed two others: Manuel de Bustamente (1692) and Francisco Serrano de Reina (1695), fully demonstrating, therefore, that in his compilation of laws, he had not intended to suppress, nor had he suppressed, the Province of Costa Rica.

His successors continued to fill those offices in proprietorship, as appears by the appointments of Lo-

renzo Antonio de Granda (1703), Diego de la Haya Fernández (1718), Baltasar Francisco de Valderrama (1724), Antonio Vázquez de la Cuadra (1733), Juan Gemmir (1738), Cristóbal Ignacio de Soria (1748), Manuel Soler (1757), José de Nava (1765), Juan Fernández de Bobadilla (1771), José Perié (1777), José Vázquez Téllez (1789), Tomás de Acosta (1796), Juan de Dios de Ayala (1810) and Bernardo Vallarino (1818).

The titles of these governors and captains-general were conferred by Royal cédulas, granting to them the same jurisdiction that their predecessors exercised, but without changing the boundaries of the province.

Señor Maura states in his opinion in behalf of Colombia (page 23) that it is idle to give any attention to the period subsequent to 1680, because both parties were agreed that the designation of the frontier districts of the Audiencias of Panama and Guatemala did not suffer any alteration whatever during the centuries that followed.

4. Boundaries of the Viceroyalty of Santa Fé With Costa Rica as a Province of the Audiencia of Guatemala and Bordering Thereon.

After the Viceroyalty of *Santa Fé* was created and the Audiencia of Panama was recast, the boundaries of the Province of Costa Rica continued as a matter of fact to be the same, on the east, as they were before; that is, as separating the Audiencia of Guatemala from the Audiencia of Panama, a dependency of the Audiencia of Peru.

(a) *Antecedents.*

We have already seen, in treating of the demarcation of Artieda of 1573, how, by virtue thereof, there was left included in the Province of Costa Rica, the Valley of Guaymí on the north and within the limit marked by the Escudo de Veragua, and the Valleys of Chiriquí on the south.

Dr. Alonso Criado de Castilla, the Senior Judge of the Audiencia of *Panama*, on May 7, 1575 (Doc. No. 64), wrote his "Description of the Kingdom of Tierra Firme, Which is Subject to the Royal Audiencia of Panama," in which he told the King:

"The territory that is settled in this Kingdom, as far as the jurisdiction of your Royal Audiencia of Panama extends, is eighty leagues in length, that is, from the Gulf of San Miguel *as far as Concepción de Veragua*; and twenty-four in width, which is from the same city of Concepción to Philipina."

Regarding the Province of Veragua, he asserted that it

"* * * has a district thirty leagues in length, extending from the said city of *Concepción*, as far as the village of Mariato, and in width twenty leagues in its greatest extent, which is from the river *Calobre* as far as the said city of Concepción."

According to this description of the Audiencia of Panama, the demarcation of Artieda was located outside of it. In order to decide the conflict, which had arisen between the latter and the Governor of Veragua in regard to the settlements Artieda had been planning

to make the King, by Royal cédula of August 30, 1576 (Doc. No. 66), entrusted to the Audiencia of *Guatemala* the duty of determining upon which side those establishments were going to lie since they should have been dependencies of the governor to whom the Guaymí river, the Bay of Almirante and Bocas del Drago belonged as the boundaries of his government. And, indeed, Artieda founded the city of his name in 1577, and took possession of the Valley of Guaymí in 1578 (Doc. Nos. 67 and 68).

The President of the Audiencia of Guatemala and the Judge Inspector (Juez Visitador) of Costa Rica issued a commission, in 1591 (Doc. No. 78), to Captain Cabral, in the execution of which he travelled over all of Bocas del Drago and the Bays of Almirante; and

“* * * having entered the Guaymí river, he traversed with the soldiers the whole of the isthmus of land which lies from the North Sea to the South Sea and came out to the savannas of Chiriquí.”

We have seen, also, how in 1605, Sojo, the deputy of Ocón y Trillo, Governor of Costa Rica, founded the city of *Santiago de Talamanca*, the territory of which was marked out as far as the line of the Escudo de Veragua, the end of the Government of Costa Rica. Dr. Alonso Criado de Castilla, who knew so well the Audiencia of Panama, was then President of the Audiencia of Guatemala and in his letter to the King of November 30, 1608 (Doc. No. 74), he speaks of the territory of the Bay of Almirante as belonging to Costa Rica, “* * * which borders upon that of Veragua belonging to the district of the Royal Audiencia of Panama,” and he makes allusion to the con-

quest of Talamanca and the boundaries of the Valley of Duy.

During the XVIIth century the governors of Costa Rica and the Audiencia of Guatemala made great efforts to subdue the Indians of Talamanca, and the King approved the undertakings that were carried on, and even bestowed special rewards on their leaders (Doc. Nos. 77, 78, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 137, 138, 139, 153, 161, 237, 238 and 239). The missionaries worked admirably in the XVIIIth century to pacify and reduce the Indians of Talamanca, the missions having their headquarters in Guatemala, the audiencia of which, and the Province of Costa Rica, helped them so far as they were able by supplying them with necessities and protecting them with military escorts (Doc. Nos. 140, 142, 143, 144, 145, 147, 149, 152, 153, 158, 164, 170, 172, 175, 178, 217 and 240).

On the southern side of the Province of Costa Rica, the Valleys of Chiriquí, expressly embraced in the demarcation of Artieda, were always a border region with the Province of Veragua, although by toleration they did not remain wholly within the former, for the *Chiriquí Viejo* river was considered as the divisionary line. At that river was fixed the boundary of the *Corregimiento* of *Quepo* and *Boruca*, to which the Royal cédulas of April 28, 1709 (Doc. No. 146), September 1, 1713 (Doc. No. 152), and May 24, 1740 (Doc. No. 164), refer.

Such was the state of things when the Viceroyalty of Santa Fé was created; but by its creation the Audiencia of Guatemala suffered no change whatever in its boundaries, because all action in the matter of that audiencia was reduced to the effort to preserve its contiguity with the Audiencia of Panama, although

dependent upon the new viceroyalty instead of the Viceroyalty of Peru; and when that audiencia (of Panama) was suppressed and its jurisdiction merged in the Viceroyalty of Santa Fé, in which it was recast, there was no variation in the boundaries of Costa Rica.

But it is very interesting to follow the descriptions of the Viceroyalty of Santa Fé, because in stating its boundaries with that of New Spain and the Audiencia of Guatemala, those of Costa Rica are confirmed, and as a province Costa Rica remained dependent upon the latter down to the end of the colonial epoch as has been demonstrated.

(b) *Description of the Kingdom of Tierra Firme by the Comandante General of Panama, Don Antonio Guill, in 1760.*

The Audiencia of Panama having been suppressed in 1751, and its government converted into the *Comandancia general* of Tierra Firme, it was directed by Royal order of May 1, 1758, that a description should be made of it; this was done by Don Antonio Guill y Gonzaga, who was then the *Comandante general*, in a report addressed from Panama, September 30, 1760 (Doc. No. 171), to the Minister of the Indies.

According to that description, the Government of Tierra Firme, was composed, in 1760, of Darién, Panama, Portobelo and Veragua. The Province of Veragua was ruled by a governor, who had under his orders the sub-governors or deputies of Nuestra Señora de los Remedios and of Santiago al Angel (Alanje), or Chiriquí. The last settlement of the Province of Veragua, on this side, was Bugaba, to the east

of Chiriquí Viejo river and distant, two leagues from the frontier of Costa Rica.

(c) *Description of the Viceroyalty of Santa Fé, by Its Viceroy, the Marquis de la Vega de Armijo, in 1772.*

In the *Description and Status of the Viceroyalty of Santa Fé*, by its Viceroy, the Marquis de la Vega de Armijo, written by Dr. Moreno y Escandón, *Fiscal Protector* of the Indians, in 1772 (Doc. No. 174), it is stated that this viceroyalty borders on that of Mexico by *Costa Rica*, "and being divided from the Audiencia of Guatemala there is left for its district, that of the Province of *Alanje* and *Veragua*, all the South Coast, from the *Bay of Chiriquí* (or of David) by that of Guayaquil to near Cape Blanco * * *."

The description goes on to treat of the country to the north, east and south down to when it says: "* * * until by Portobelo and the Government of the Province of *Veragua* it closes the boundary upon the Audiencia of Guatemala and Viceroyalty of New Spain * * *."

(d) *Report of the Governor of Veragua, Don Félix Francisco Bejarano, in 1775.*

The Governor of Veragua, Don Félix Francisco Bejarano, at the request of Guatemala, reported in 1775 (Doc. No. 175), that the end of Veragua reached as far as the frontier of *Talamanca*, which is left in Costa Rica, and therefore with its Bay of the Almirante (Bocas del Toro) and its Islands of Tójar, or Colón, etc.

(e) *Description of the Viceroyalty of Santa Fé, of Tierra Firme and of Veragua, by the Missionary Sobreviela, in 1796.*

In the most interesting work of Fray Manuel Sobreviela, Missionary of Ocopa, entitled: "Description, Historic-Geographical, Political, Ecclesiastical and Military, of Southern America," (Lima, 1796; Doc. No. 181), the Viceroyalty of Santa Fé is first described generally, by the statement that it embraces

"* * * from the *River Chiriquí*, of the Kingdom of *Tierra Firme*, which is the *dividing line* of this Viceroyalty and of the two Americas by the District of *Costa Rica*, of the Province of Guatemala, as far as the neighborhood of the Gulf of Maracaibo."

It then takes up the Kingdom of *Tierra Firme*, and says that it

"* * * is bounded on the East by the Province of Cartagena, from which it is separated by the River San Juan; on the West by the RIVER CHIRIQUI, which serves as the *boundary of the Province of Costa Rica*, in the Kingdom of Guatemala; on the North by the North Sea and on the South by the Pacific. It is two hundred leagues in length from East to West; that is, from the River Atrato or Gulf of Darién, *as far as the River Chiriquí (Viejo, or old, of South)*, and eighty in width from North to South, at the widest part, which is from the port or bay of Mariato to the point of the bay or port of the River Chagres. This Kingdom is divided into three provinces, which are Panama, *Veraguas* and Darién."

Continuing it takes up *Veragua*:

“It is bounded on the North by the North Sea; on the South by the Pacific Ocean; on the East by the Province of Panama, and on the West by the River Chiriquí, *which divides it from Costa Rica* and Kingdom of Guatemala. It is sixty leagues from East to West, from the city of Natá to the village of Chiriquí and eighty in width from the Cape of Conejos on the South Sea *to the extreme of the ESCUDO DE VERAGUAS* in the North Sea.”

And in describing the principal *rivers* of the Provinces of the Kingdom of Tierra Firme, it says:

“The first is the River *Chiriquí*, which rises in the mountains in the South part of the Province of Veragua and empties into the South Sea or Pacific (Gulf of Chiriquí or *Sinus Chiriquensis* of the Map of the Jesuits Brentano and La Torre). It serves as boundary to *this province* and to all Southern America *which it separates from the Northern and from the District of Costa Rica* in the Kingdom of Guatemala.”

It is thus seen that the description is complete and agrees perfectly with the antecedents we have set forth.

(f) *Official Communication of the Governor of the Islands of San Andrés, in 1802; and Résumé.*

In concluding, let us add that the *Escudo de Veragua* was even recognized as a border point by the Governor of the Islands of San Andrés, Don Tomás O’Neill, of whom we shall speak hereafter as the instigator of the Royal order of 1803, which, according to Colombia, incorporated Costa Rica in the Viceroyalty of Santa Fé.

O'Neill, addressing himself to the President of Guatemala, in an official communication of October 22, 1802 (Doc. No. 184) said:

"If Your Worship will be pleased to write to said Chief (the Viceroy of Santa Fé), and get from him a frequent visit of the vessels of the King in these waters, for they only go as far as the ESCUDO DE VERAGUA, *which is the limit of the demarcation between the two Kingdoms*, it would avoid great injury to the State, etc. * * *."

To recapitulate: the boundaries of the Viceroyalty of Santa Fé with the Audiencia of Guatemala at the beginning of the XIXth century were: on the north the line extending from the *Escudo de Veragua* which corresponds to the *Chiriquí* (not *Viejo*, or old), or *Culebra*, or *Calobébora* river (by which various names it is called); and on the south the *Chiriquí Viejo* river. And, therefore, those were also the boundaries of Costa Rica, the last province of the Audiencia of Guatemala, bordering on that Viceroyalty.

II.

THE ROYAL ORDER OF NOVEMBER 20, 1803, REFERRING TO THE MOSQUITO COAST.

1. Antecedents, Formation and Text of the Order.

From the time of the conquest of Jamaica, the English never ceased their encroachments upon the Islands of San Andrés and the Mosquito Coast, which acts became a source of continuous conflicts; to this, however, the Treaty of London, of July 14, 1786 (Doc. No. 176), sought to put an end by agreeing that the Eng-

lish should evacuate the places where they had established themselves.

Those islands of San Andrés (embracing under that appellation those of San Andrés, Santa Catalina and Providencia), were the subject of serious attention by the Spanish rulers, nearly all of their inhabitants having been English and the islands themselves centres of smuggling and of forays upon the Mosquito Coast.

Don Tomás O'Neill, a captain of infantry who had been in the military service of the Viceroyalty of Santa Fé, was commissioned, in 1789, to visit those islands, where he became intimate in friendship and business with the Taylor brothers who exercised great influence there. The Taylor brothers, in 1794, through the Viceroy of Santa Fé, applied to the King asking that the English might be allowed to continue in the islands, that a governor be appointed (whose salary they would pay), and that Don Tomás O'Neill be named as such governor.

Lieutenant Don José del Río of the Navy who also visited those islands by order of the King, gave His Majesty a very minute account of them in his extended report from Trujillo, dated August 23, 1793 (Doc. No. 179); in this he advised that the islands be abandoned and that with their settlers an establishment be made at Bluefields on the Mosquito Coast.

By Royal order of November 6, 1795 (Doc. No. 180), it was provided that "for the present" the English should not be compelled to evacuate the Island of San Andrés and establish themselves at Bluefields; that this might be accomplished later, on a suitable occasion, and that Don Tomás O'Neill should be Governor "dependent upon your Captaincy-General (of Guatemala)."

Scarcely had he taken possession of his office when he fell out with the Captain-General of Guatemala, who ordered him to leave the islands until the conclusion of peace with England, and assigned him to various military duties in Nicaragua. Having had occasion to go back to the islands, he petitioned that there should be conferred upon him the political and military command of the establishments of Trujillo, Cape Gracias á Dios and San Juan de Nicaragua, with a salary of 3,000 pesos, and other extraordinary conditions, all of which the Captain-General of Guatemala refused.

Once back at San Andrés he undertook to free its government from that of Guatemala, to this end making use of his friends, the Taylors, and counting upon the support of his protectors in Santa Fé.

Under date of December 5, 1802 (Doc. No. 185), O'Neill addressed himself to the Minister of War, sending him two statements, one from the *Alcalde*, Juan Taylor, of November 25 (Doc. No. 187), and the other his own, of December 4 (Doc. No. 186), in which he asked for the aggregation of those islands of the Mosquito Coast to the Viceroyalty of Santa Fé; these statements he forwarded through that viceroyalty instead of the Captain-General of Guatemala—because of the difference in distance, he said.

Both statements went to the Board of Fortifications and Defense of the Indies which, on September 2, 1803 (Doc. No. 189), reported favorably thereon, adding that it would be desirable to follow the same course with regard to the establishments of Cape Gracias á Dios and the Bay of Bluefields on the desert Mosquito Coast. The record in the case was returned to the Board on the 23rd of the same month, and its attention called to the fact that if this plan were carried out it

would leave Guatemala undefended on the Atlantic side. The Board insisted, in its second report of October 21st (Doc. No. 190), confining itself to the statement that the segregation would not be injurious to Guatemala, since the Mosquito Coast was a wilderness. In accord with these reports it was determined to issue the Royal order which Don Miguel Cayetano Soler, acting as Minister of War, communicated, on November 20, 1803, to the Captain-General of Guatemala.

This same Minister in another communication, transmitted the order to the Viceroy of Santa Fé, and this communication is the one that was invoked by Colombia; it reads as follows:

“San Lorenzo, November 30, 1803.

“Most Excellent Sir:

“Don José Antonio Caballero, in a letter of the 20th instant, writes to me, as follows:

“‘The King has resolved that the Islands of San Andrés and the part of the Mosquito Coast from Cape Gracias á Dios, inclusive, toward the River Chagres, shall be segregated from the Captaincy-General of Guatemala and be dependent upon the Viceroyalty of Santa Fé. And His Majesty has been pleased to grant to the Governor of the said islands, Don Tomás O’Neill, the salary of 2,000 *pesos fuertes*, instead of the 1,500 which he at present enjoys. By Royal Order I inform Your Excellency that the Ministry in your charge should take the necessary steps for the fulfillment of this sovereign mandate;’ all of which I state to you by His Majesty’s command, for its due execution.

“May God keep Your Excellency many years.

“SOLER.”

“To the Viceroy of Santa Fé.”

2. That Order Was Not Applicable to Costa Rica, Because What Was Called the Mosquito Coast Ended Before That Province Began.

The importance attributed by Colombia to this Royal order is very great, for she assumes that it incorporated into the Viceroyalty of Santa Fé the long stretch of territory that extended from Cape Gracias á Dios as far as the Chagres river, within which extension Costa Rica was embraced. That is to say, that just as Colombia argued that "all Veragua, and therefore Costa Rica, belongs to Tierra Firme," now she argues that "all of the Mosquito Coast as far as the Chagres river, and therefore Costa Rica, belongs to the Viceroyalty of Santa Fé."

But this Royal order was not applicable to Costa Rica for the very simple reason that it referred only to the Mosquito Coast which ended on the south before that province began.

The origin of the name and the extent of the Mosquito Coast are clearly shown by the official documents.

The *Bishop of Nicaragua*, Fray Benito Garret, in his report to the King of November 30, 1711 (Doc. No. 151), relates that in the year 1641 a vessel laden with negroes was wrecked on the coast that extends from Trujillo as far as the mouth of the San Juan river; that these negroes were forced into a fight with the Carib Indians, and the latter, defeated, withdrew through the mountains towards the territories of Segovia and Chontales; that the victors took to themselves the women of defeated Indians, and that their descendants were called "*Zambos*," the issue of negroes and Indians. This accords, he says, with the

account given by a negro, named Juan Ramón, "who lives now in this city (Granada de Nicaragua) and whose advanced age accords well with the recollection which he asserts that he has of the facts he narrates."

The Bishop complained to the King of the lamentable ravages and captures made by the *Zambos* who occupied the locality called Puntagorda and the *said Mosquito territory* which is, as indicated in a parenthesis, the "sea coast from the mouth of the River San Juan as far as the city of Trujillo in the Province of Honduras," the longitude of which, he adds further on, would be about sixty leagues. And he asks the King for the subjugation of the *Zambos*, suggesting the best means to that end.

By *Royal cédula* of April 30, 1714 (Doc. No. 154), the King directed the Captain-General of Guatemala to undertake the conquest of the Mosquitos, he ascribed their origin to the same source as that given in the Bishop's account, and took into consideration the reports of the said captain-general regarding the settlements of the Carib Indians, negroes and *Zambos* in Mosquito island, on the side of the Province of Nicaragua; and said further that it was well known that they were on the coast of the North Sea, spread over an area of fifty to sixty leagues, beginning to count at twelve leagues from the San Juan river up to twenty from the city of Trujillo; that *Zambos* were skillful in the handling of arms, and were assisted and protected by the English of Jamaica, with whom they carried on their trade.

The attempt to subdue the Mosquitos was not successful. These people, clever in the management of boats and even the firearms with which they were supplied by the English, made continual incursions by

sea and land upon the neighboring settlements, carrying with them desolation, captivity and death. As the result of a report from the Captain-General of Guatemala dated May 10, 1737, and relating to a treaty of peace proposed by the so-called "King" of the Mosquitos, and to the two settlements which the English had begun to establish on that coast, the Council of the Indies rendered an opinion setting forth the means for subduing the Mosquitos and avoiding the evils of their relations with the English; this opinion was approved by the King in the Royal *cédula* of August 8, 1739 (Doc. No. 162).

In that *Opinion of the Council of the Indies*, of July 8, 1739 (Doc. No. 162), the following appears:

"These people owe their appellation and origin to the Island of Mosquitos, where, in the year 1641, there arrived a vessel laden with negroes (who captured the Indians in order to sell them as slaves and kept the women for purposes of procreation) * * *. According to reports from the President and others, they occupy at the present time more than sixty leagues of land extending from the jurisdiction of Comayagua (Honduras) *as far as that of Costa Rica* of the dominions of Your Majesty adjoining the coast of the North Sea, their territory being in width only three leagues of productive and habitable land extending up to the slope of the mountains that separate them from the dominions of Your Majesty * * *. In those sixty leagues they have established for their dwellings twenty-four settlements or hamlets * * *; by the last and most reliable news that has been received, the Mosquitos number 2,000 men who bear arms. They also have among them Spaniards, French, English, apostate Indians and fugitive slaves, their territory being

a general asylum for all the scoundrels who flee from justice * * *. The care of the Council is growing on account of these enemies, because they are found to have considerably increased; and not only have they a chief * * *, but they have the boldness to call him a King and demand that Your Majesty shall recognize him as such in a treaty of peace and commerce, which unheard of, insolent audacity leads us to suspect that it does not come from them alone. This presumption becomes probable * * * when it is noted that these barbarous Mosquitos are intimate and in league with the English of Jamaica, of New England, etc. * * *."

The Captain-General of Guatemala, Don Pedro de Rivera, in a *report* of November 23, 1742 (Doc. No. 166), addressed to the King in response to his order, concerning the measures for the expulsion of the Mosquitos, says of them :

"At a short distance from Cape *Gracias á Dios*, which is on the coast of the Province of Comayagua, there is a small island named *Mosquitos*, in which, in the year 1650 (according to tradition) a vessel was wrecked which carried negroes under the charge of Lorenzo Gramalxo, of the Portuguese nation * * *; they interbred with the Indians, and produced the *Zambos*, under the designation of "*Mosquitos*," derived from the island upon which the negroes were shipwrecked, and this is the distinctive appellation by which they are known, and *this name applies to all those that dwell with them*, they being the heathen Indians that inhabit those territories, the mulattoes and negroes who have left the dominions of His Majesty in order to enjoy the free life without any subjection * * *. The English who live among the *Zambos* are most degraded * * *; the *Zambos* are

so far subordinate to the English nation that they obey its orders as if they were under its sovereignty, and the one that they have among them under the title of King is invested with it by the Governor of Jamaica."

The Captain-General of Guatemala enumerates twenty-seven hamlets which the *Zambos* occupied at that time and which lay generally along "the rivers which are to be found *between* the two Provinces of Honduras and Costa Rica," also mentioned by him. And he describes the Island of San Andrés, on which lived the *Zambos* "in conjunction with the English," situated thirty leagues from that coast.

It results from these official documents that the evidence is clear that it was the Mosquito Coast that was occupied by this little race of *Zambos*, which sprang from the union of the negroes who came to the Island of Mosquitos and the Carib Indians located in the Province of Nicaragua, between the Provinces of Honduras and Costa Rica. Its length is fixed at sixty leagues.

The Columbian publicist and statesman, Don Pedro Fernández Madrid, claims, like the majority of English geographers, that the Mosquito Coast begins at Cape Honduras, but he says that it ends at *Punta Gorda*, near the most northern arm of the San Juan river of Nicaragua. The Bishop of Nicaragua counts the sixty leagues from the mouth of the San Juan river to the city of Trujillo, indicating *Punta Gorda* as the last point in the south occupied by the *Zambos*, from whence they make their raids. The Royal *cédula* of 1714 begins to count the fifty or sixty leagues, which it says this coast has, at twelve leagues to the north

of the San Juan river up to twenty from the city of Trujillo. The Council of the Indies, in its opinion of 1739, starts from the end of Comayagua; according to this the sixty leagues of which it speaks begin at Cape Gracias á Dios and end in the centre of the lagoon of *Bluefields*.

It must be remembered that the *Province of Costa Rica* ended on the north at the Desaguadero, or San Juan river, and that this boundary is found some ten leagues beyond Punta Gorda, twenty from Bluefields and eighty from Cape Gracias á Dios. Therefore Costa Rica was not embraced in the Mosquito Coast.

It is true that Costa Rica reached as far as Cape Gracias á Dios and even Cape Camarón in the early times, still it did not extend beyond the Desaguadero, or San Juan river, after it was definitively bounded, in 1573, with the Artieda's Government. The portion segregated from Costa Rica in that year, is that with which, in 1576, the Province of Teguzgalpa was formed, and that which corresponds to the Mosquito Coast. This northern portion was divided between Honduras and Nicaragua, by Royal cédulas of August 23, 1745, establishing as the divisionary point Cape Gracias á Dios, which is the point that was fixed as the boundary between the present republics of those names by the award of the King of Spain hereinbefore cited.

Because the Royal order of 1803 says: “* * * the Islands of San Andrés and the part of the Mosquito coast from Cape Gracias á Dios, inclusive, toward the River Chagres, shall be segregated, etc.,” Colombia claims that Costa Rica was also segregated, since it lay that side of the Chagres river. But the Royal order does not say *hasta* (to, or as far as) but *hacia* (toward) the Chagres river, and consequently

this river does not mark the boundary, but only indicates the direction. Let us remember the laws of the demarcation of audiencias and the numerous Royal orders which we have cited, and it will be seen that whenever it was desired to indicate a boundary, the word naturally employed was "*hasta*" (to, or as far as); whereas, when it was desired to indicate direction the word used was "*hacia*" (toward) or "*á la parte de*" (on the side of). These latter words are more expressive, for instance, when, in the demarcation of the Province of Costa Rica assigned to Ortiz de Elgueta, Cavallón and Vázquez de Coronado, it says from Honduras and Nicaragua "*á la parte de* (on the side of) the cities of Nombre de Dios and of Panama"; and yet Colombia will not acknowledge that this signified that the Province Costa Rica should have reached as far as the line determined by those two cities. Nor can Colombia be understood as meaning to say that the territory incorporated in the Viceroyalty of Santa Fé was that which reached as far as the Chagres river, next to Portobelo, since Portobelo and the Province of Veragua already belonged to it.

If the reports of the Board of Fortifications (Doc. Nos. 189 and 190), by virtue of which the Royal order of 1803 was issued are read, it will be seen that they do not refer to the whole of the Mosquito Coast, but only to the *establishments* of Cape Gracias á Dios and Bay of Bluefields. When, by virtue of the Treaty of London, of 1786 (Doc. No. 176), the English evacuated the Mosquito Coast, four settlements or establishments of Spaniards were directed to be created therein; and it was especially in order to protect these establishments that that Royal order was issued. If it says the part of the Mosquito Coast from Cape

Gracias á Dios towards the Chagres river, it is in order that it should not be understood as meaning from Cape Gracias á Dios in the direction of Honduras, but towards the south, and as far as those establishments, which had as their maximum limit the Desaguadero or San Juan river, might reach.

3. Military and Transitory Character of That Royal Order.

Even assuming that it had been desired to include Costa Rica in the Royal order of 1803, that order lacked the force to change the legal status of the province as to administrative dependency and boundaries, as we are about to show; and as such a hypothesis is only supported by the words "toward the River Chagres," it cannot be seriously considered as a sufficient basis for the suppression of a province or its transfer from one viceroyalty to another or from one audiencia to another.

From its preparation and its purpose that Royal order can only be characterized as a military order. It was issued by the Minister of War, as a result of petitions addressed to him, and the approval not of the Supreme Council of the Indies, but of the Board of Fortifications and Defense of the Indies; and it was promulgated by the same ministry to the military and not to the civil authorities. Its purpose, as shown by the reports of that Board and deduced from the history that has been given of the Mosquitos, allied with the English, was to provide a better defence for the Islands of San Andrés and the Spanish establishments on the Mosquito Coast, against the attacks from the *Zambos* and English.

Responding to these needs for protection, and also for the prevention of smuggling, other provisions had been previously enacted entrusting the guardianship of these coasts to the neighboring governors without any idea of making thereby any change in the demarcations of their respective districts. Thus, we see the Royal cédula of August 23, 1745 (Doc. No. 167), which appointed the Governor of Nicaragua, Don Alonso Fernández de Heredia, *Comandante General de las Armas*, and sought to prevent illicit commerce throughout the territory embraced between Cape Gracias á Dios and the Chagres river; the Royal order of September 24, 1786 (Doc. No. 177), addressed to the Captain-General of Guatemala, in which he is informed that the Viceroys of Mexico and Santa Fé have been directed that he shall be given whatever he asks for in order to facilitate the evacuation of the Mosquito territory; that of February 26, 1788, to the *Comandante de Marina* of Havana, to place himself at the orders of the Captain-General of Guatemala, etc.

Such measures were merely transitory in character, and they ceased to be effective when there came a change in the circumstances or personnel which had called them forth. O'Neill knew how to take advantage of the circumstances in which those islands, and the establishments of the Mosquito Coast, were placed by the orders for evacuation given to the English and the latent state of war with England, in order to advance his personal ambitions. But the Royal order of 1803 served only to give to O'Neill the Government of the Island of San Andrés; this he surrendered to the English, in 1806, but it was soon afterwards restored by them to Spain.

4. The Order Could Not Change the Laws of Territorial Division.

If, nevertheless, the Royal order of November 20, 1803, be considered to be a measure not military and transitory in character, but rather one having, as Colombia claims, the capacity of a legislative mandate which changed territorial division, then, the question being placed on this ground, we are impelled to assert—and most positively—that the Royal order in question, according to the laws of the *Recopilación de Indias*, which governed when it was issued was *null and void*.

Both parties are in accord in recognizing that the *Recopilación de Indias* gave the character of *laws* to all those which it embraced in its text, and commanded that they should be obeyed and complied with as such, as directed by the Royal cédula of May 18, 1680, which sanctioned it; and it is important to remember what we have heretofore stated in regard to the value of those laws when discussing their relations to the Royal dispositions prior and subsequent to the publication of that code.

Law 1, title 1, book II (Doc. No. 92), lays down the doctrine that

“* * * those only (the laws of the *Recopilación*) shall have the force of law and pragmatic sanction¹ in that which they decide and determine; and if it should be desirable that others be made besides those contained in this book, let the Viceroy, Presidents, Audiencias, Governors and *Alcaldes mayores* advise and *inform* us as to the

¹ A *pragmatic sanction* has the force and effect of a solemn ordinance or decree by the legislative authority of the State.

same *through the Council of the Indies*, giving the motives and reasons why they are submitted in order that, being understood, such resolution may be taken as is most desirable; and they may be added in a separate volume."

Law 2, title 2, book II (Doc. No. 94), confers on the *Council of the Indies* supreme jurisdiction over all the Western Indies, and empowers that body to "order and make, with our advice the general and special *Laws, Pragmatics, Ordinances and Provisiones.*"

Law 1, title 15, book II (Doc. No. 105), of Philip IV, declares that all the territory that is discovered in the Indies is divided into audiencias, which are subordinate "* * *" to our *Supreme Council of the Indies*, which represents our Royal Person"; and it commands that the audiencias and the governments shall be preserved as "they now" are in the district of each, and that "* * *" no change shall be made therein, without our *express* order or that of our said Council."

To these laws, which we have hereinbefore cited, should be added the following, from title 2, book II, in which the direction is confirmed that measures of a legislative character and, in general, those referring to the administration of the Indies must be passed upon by the Supreme Council of the Indies, which council was to be subject to a fixed procedure, and charged with the execution and observance of those laws.

Law 6 (Doc. No. 95) charges the Council of the Indies that it shall always have a description and full investigation made of all matters concerning the conditions of the Indies "* * *" which may become matters for the administrative or *legal action.*" And Law 12 (Doc. No. 96) reads:

“Thus We command, that whenever those of our Council of the Indies may have *to provide and direct* the Laws and general Provisions for the good government of the Indies, they may be very well informed and sure beforehand of what has already been provided in the matters in question, and they must previously acquire the fullest possible information and notice about the things, affairs and territories concerned, and hear also the advice of those who govern therein and of those who might be able to throw any light on the matters, unless delay in asking for information may cause detriment.”

Law 14 (Doc. No. 97) requires that the Council of the Indies shall meet *in full membership* “* * * for the consideration of general matters of government, such as *making Laws and pragmatics* and the interpretation of derogation thereof, the *establishment of audiencias*, erection of churches and dismemberment, division and union thereof, and other matters which in the opinion of the President or Governor are *important*.” And not only this, but it is particularly provided in Law 15 (Doc. No. 98), that two-thirds of the members of the Council “must agree in an opinion” whenever there shall be a question as to “*making new Laws or repealing the old ones*.”

Law 17 (Doc. No. 99) entrusts to the Council the execution of the orders of the King for better provision and certainty; Law 18 (Doc. No. 100) provides that the Council shall report to the King whenever it may receive orders of doubtful interpretation; Law 24 (Doc. No. 101) charges it to arrange always that the *new laws and provisions be published* where and when it may be best, and Law 25 (Doc. No. 102) directs it “* * * to ascertain and understand how the Laws

We provide and order are being obeyed and fulfilled; and that they severely punish according to law those who by perversity or neglect shall not comply therewith or execute them."

We will cite, finally, Law 23, title 6, book II (Doc. No. 104), providing that the provisions and despatches in judicial matters between parties, which are issued by the Council of the Indies, shall be issued in the name of the King, without the formality of his signature; but that all other matters of government, mercy and justice arising in the Indies *shall be considered and despatched by the King*, as had been done theretofore.

All of these laws were violated by the Royal order of November 20, 1803, since it was not given by the King, but in the name of the King—it was not dictated in consultation with the Supreme Council of the Indies, but upon a report of the Board of Fortifications; and not having been acted upon by the Council (to which was entrusted the supreme jurisdiction in this regard), the guaranties were left unfulfilled in respect of the information to be given by the authorities interested, the full quorum and the minimum of votes, which the *Recopilación* required in order to change the laws of the Indies.

And as it was not the intention of the Government to make a law which should change the prior laws of territorial division, all of which had been made in the Council of the Indies, but simply to dictate a Royal order of a ministerial character, the order was signed "in the name of the King," and was transmitted by the Secretaryship of the Department of War, in order to conform to military convenience.

Counsel for Colombia, who expend so much effort

in insisting upon legislative acts for the establishment of territorial division—to the extent, even, of denying validity to the Royal demarcatory *cédulas* that antedated the *Recopilación de Indias*—deliberately ignore that code in order to give legislative force to the Royal order of 1803, and maintain that all the Royal orders issued by the absolute Monarchy had the same legal force as the laws now made by the King and the Cortes, in the Constitutional Monarchy. But that is not correct.

It is true that when the absolute Monarchy had once been consolidated and the glorious traditions of the Cortes of Castile and Aragón had been lost, the will of the Monarch was law, subject to no external limitations; but this will established differences with regard to the exercise of power and limited itself by dictating rules of a general character, to which resolutions had to be adjusted, according to the nature of the particular cases.

Although the division of powers now in operation did not then exist, the differences between the function of *legislating* and that of *administering* could not have been ignored; neither was it possible for the King to have done everything by himself. Therefore the jurisdiction was divided into that which was *retained* and that which was *delegated*, accordingly as the King reserved to himself the direct exercise of that power or delegated or confided it to the councils, ministers or judges. It is clear that the King did exercise the legislative power, by himself alone, and to avoid all doubt as to the authority from which those legislative acts emanated, they must have been headed with the name of the King and borne the signature, “I, the King.” In this manner the resolutions in matters of

government and administration reserved to the Monarch were headed and signed. Such provisions emanated directly from the King, and were called *pragmatics* and *Royal cédulas*; they differed essentially from *Royal orders*, which could be issued in his name without his signature.

Notwithstanding the delegation of power to the Council of the Indies was so ample, the *Recopilación* established the rule that the provisions for government, mercy and justice for the Indies, were *to be issued and despatched* BY THE KING, as he had been doing; that is to say, by *Royal cédulas*. And that code, in treating of the territorial division, positively prohibited any alteration be made thereof, "without the express order of the King or of the Council of the Indies."

So, then, the Royal order of November 20, 1803, which was not a Royal cédula enacted by the King, but a ministerial order issued "in the name of the King," without the advice of the Council of the Indies, and as the concluding act of an administrative proceeding, almost of a personal character (the government of Don Tomás O'Neill), it was lacking in legislative force, or even in the legal value of a decree in a matter of civil demarcation and jurisdictional fixing of boundaries.

The authority of absolute monarchs, as in every other kind of government, was of two kinds: *discretionary* and *regulated*, accordingly as it was directed to matters that were or were not subject to pre-existing regulations. The monarch was under no compulsion to issue such rules, but once issued he had to act in accordance therewith, unless he modified them or declared

exception thereto. The *Recopilación de Indias* established the *procedure for the amendment of the laws* which it contained and for the adoption of new laws, and required previous information to be given to the Council of the Indies, the consideration by the latter in full membership, the favorable opinion of two-thirds of the voting members and the intervention of that Council in the publication and execution of the law. None of these things was done in respect of the Royal order of 1803; therefore, it could not have the character of a law.

Spanish legislation did not tolerate such transgressions of legal procedure. It declared to be *null and void* all dispositions which were not in conformity with legal formalities, or which might be contrary to pre-existing law which might be in force. Law 2, title 4, book III of the *Novísima Recopilación*, says:

“Since it happens that by importunity of some or in some other way We may grant and deliver some letters or Royal patents in contravention of right or contrary to law or statute in force, therefore We command that such letters or Royal patents *shall be of no value nor shall they be complied with*, although they may contain the provision that they are to be executed notwithstanding any statute or law or ordinance or any other abrogatory clauses whatsoever.”

And this is applicable to the present case, not only because it shows that the general system of Spain in the matter of legislation was not one of despotism, but also for the reason that Law 2, title 1, book II (Doc. No. 93), of the *Recopilación de Indias* directs that the legislation of Castile shall be *supplemental* thereto.

It is important, also, to note that the laws of the *Recopilación de Indias* continued in force in the Spanish-American provinces until their independence, in so far as they may not have been modified by subsequent provisions of a legislative character; and the publications of that code which were made after 1680 were nothing more than mere new editions thereof. The fact is that the Royal order of November 20, 1803, does not figure in the chronological list of the Royal cédulas, Royal orders and decrees embraced in the notes appended to the Laws of the Indies, in the Fifth Edition (1841), approved by the Court of the Indies (*Sala de Indias*) of the Supreme Tribunal and the Regency of the Kingdom, which we have before us.

We will say, finally, that Colombia's argument, in support of the legal force of the Royal order of 1803, based as it is on the fact that there was another order of like character issued July 15, 1802, relating to the segregating of the Government and *Comandancia General* of *Maynas* from the Viceroyalty of Santa Fé and its aggregation to that of Peru, proves quite the contrary from what Colombia desires to prove and it constitutes the best possible confirmation of the doctrine which we have stated.

It was not by a Royal order, dictated in the name of the King, but by the *Royal cédula* of July 15, 1802 (Doc. No. 183), by the King himself, speaking in his own name, issued to the viceroys affected thereby, that the Government and *Comandancia General* of *Maynas* was created; it was formed out of territory which was minutely marked out, segregated from the Viceroyalty of Santa Fé and incorporated into that of Peru. It was the result of protracted proceedings that extended over a period of twenty-five years, initiated by Don

Francisco Requena, Royal Commissioner of Boundaries, who administered that territory for a long time. It was pursued from the very beginning before the Council of the Indies which, after the fullest information from the viceroys and audiencias interested, and in conformity with the opinions of the *Fiscales* (Attorneys General) of Peru and New Spain and of the *Contaduría General* (General Financial Office), agreed in full membership to suggest this change in an opinion to the King. The Royal cédula approving it was communicated, as was provided therein, to the Viceroys of Peru and New Granada, to the President of the Audiencia of Quito, to the Archbishop of Lima and to the Bishops of Quito and of Trujillo; all obeyed and complied with it. And besides it was proclaimed from town to town.¹

This was the legal course to be pursued, and the course which would have been pursued had it been desired, by the issuance of the Royal order of 1803, to change the demarcation of the Viceroyalties of Santa Fé and New Spain and the jurisdictional limits of their respective audiencias and governments.

5. The Inefficacy and Abrogation of This Royal Order.

Furthermore, the Royal order of November 20, 1803, called that of "San Lorenzo," fell morally still-born; no one took any notice of it, and it was contradicted by

(1) This Royal cédula of 1802, relating to the Government of Maynas, is discussed at length in the work written by one of the counsel herein. See "A Study of the Question of Boundaries between the Republics of Peru and Ecuador" (*Estudio de la cuestión de límites entre las Repùblicas del Perú y del Ecuador*), Madrid, 1907. Translated into English by Harry Weston Van Dyke, Washington, 1910.

numerous provisions, which proceeded in every case as though it had never existed.

As soon as the Brigadier, Don Roque Abarca, Inspector of Militia of the Captaincy-General of Guatemala, received knowledge of this Royal order, he sent a communication (Doc. No. 194) to the Captain-General and President of the Audiencia, Don Antonio González, setting forth the great injuries that would result from its execution, and showing that even were it to be insisted upon, it was undesirable in every way to confide its execution to O'Neill. The President, González, forwarded these observations to the Minister of War, in the despatch of June 3, 1804 (Doc. No. 195), making them his own and stating that they were in accord with his information and the documents which he had before him.

The Brigadier Abarca declared that O'Neill's sole purpose was to carry on contraband trade on a large scale, as he already had been doing (or protecting it) with Jamaica; that for this purpose he falsified the facts and contradicted what he had said in writing; that the accepted plan of O'Neill was the very same which he had proposed to them, the captain-general and himself, and which they had rejected with indignation; that the plan conceived by O'Neill was impracticable and its realization could only be considered as the work of a crazy person, or of expert smugglers; and that the plan which ought to be pursued for the colonization of the Mosquito Coast was another and very different one, the one which he advised—slow but sure.

So energetic an attack by the Captain-General of Guatemala took away all the moral authority of the Royal order of 1803, and left it but a dead letter.

The Captain-General of Guatemala kept right on acting in the matters relating to the Mosquito Coast, as is proved by numerous documents and especially by the Royal order of November 13, 1806 (Doc. No. 197). That official had applied to the Secretaryship of State and War (Doc. No. 193), in a complaint against the Intendant of Comayagua (Honduras), who claimed to have the administration of the establishments of the Mosquito Coast, saying that they had "always depended immediately upon this Captaincy-General," and the Royal order says:

"The King having been informed by the letters of Your Worship * * * and by the documents accompanying them * * * His Majesty has resolved that Your Worship is the one who must have *sole charge* and the absolute cognizance of all the affairs that arise in the Colony of Trujillo and other military posts of the Coast of Mosquitos, relating to the *four* matters referred to (Justice, Police, Finance and War), in compliance with the Royal Orders issued since the year 1762, which authorized you to occupy, defend and settle *that Coast*, until that object being in whole or in part secured, His Majesty may deem it suitable to change the actual system * * *"

So that, even supposing that the Royal order of 1803 ever had any legal value and could have been put into practice, it was abrogated by this order of 1806 which retained the Mosquito Coast under the dependency of Guatemala, in the four departments of *Justice, Police, Finance and War*.

By Royal order of March 31, 1808 (Doc. No. 198), addressed to the Captain-General of Guatemala in reply to his communications of January 3 and June 18,

1805, it was provided that the *San Juan* river of Nicaragua should remain open to navigation and commerce; that, in order to promote the clearing and cultivation of the immediate lands the same favors were granted to their inhabitants that were conceded to the new settlers of the Mosquito Coast by the Royal order of November 20, 1803 (a different order from that of the same date which is invoked by Colombia (Doc. No. 474); that, for a period of ten years there was to be exemption from duties and tithes on the products that might be harvested within a distance of *ten leagues* from the river, on either bank thereof; and that the establishment of a settlement should be undertaken near the said San Juan de Nicaragua river. Those ten leagues of the coast to the north lay in what was called the Mosquito Coast; and the ten on the south belonged to Costa Rica. This Royal order of 1808 proves, therefore, that the jurisdiction of the Captaincy-General of Guatemala continued upon the Mosquito Coast, at the mouth of the San Juan river, and also in Costa Rica, and that the Royal order of 1803, did not operate against this jurisdiction.

The Valley and Coast of *Matina*, which Colombia claims as embraced within the Mosquito Coast, continued under the command of the Governor of the Province of Costa Rica, as is shown by several orders which its governor, at that time Don Tomás de Acosta, gave to the Judge and *Comandante* of Matina, and the communications of this Governor to the Captain-General of Guatemala concerning matters in that district (1808 and 1809). The official communication of Don Tomás de Acosta to said captain-general, of September 20, 1809 (Doc. No. 199), merits special attention. In that communication he gives an account of the let-

ter which the Governor of the Island of San Andrés had written to him, telling him that the Government of Matina belonged to that of San Andrés, by reason of its command of the coast from Cape Gracias á Dios as far as the Chagres river; against this Acosta protested, on the ground that it was contrary to immemorial tradition, and he ended by stating to the Captain-General as follows:

“In this Government the *Royal Orders* of 1803 and 1807 which O’Neille cites *do not exist*; wherefore and perhaps because he has not given to them the proper understanding, *I will continue without change in the command of this province and its coasts*, until Your Worship may otherwise provide or consult His Majesty in order to avoid disputes.”

On November 7, 1809, the Captain-General of Guatemala, replied to the Governor of Costa Rica stating that the Governor of the Island of San Andrés had no authority whatever over the Coast of Matina (Doc. Nos. 200 and 201).

The Cortes of Cádiz, on the petition of the Deputy for Costa Rica, Don Florencio del Castilla, without opposition by the representatives of the Viceroyalty of Sante Fé, and after the Council of the Regency had been heard, resolved by decree of December 1, 1811 (Doc. No. 204), that the Port of *Matina* should be opened, and exemption from duties on exports granted for ten years. The Captain-General of Guatemala referred the decree to the Governor of Costa Rica, on May 25, 1812, because of the fact that the Port of Matina was under his jurisdiction, and the latter governor replied, on July 1st, that he was fully advised of

this sovereign provision for its execution (Doc. No. 208).

To *summarize*; neither the Mosquito Coast, nor the coastal portion of the Province of Costa Rica, passed to the Viceroyalty of Santa Fé, but continued as a dependency of the Captaincy-General and Audiencia of Guatemala in the Viceroyalty of New Spain. The only effect produced by the Royal order of November 20, 1803, was the creation of the government of O'Neill which was confined to the Islands of San Andrés. Those islands having been the subject of continuous dispute between the Spanish and the English, were left to Spain until the struggles for independence. In 1818 a band of pirates commanded by Captain Louis Aury, took possession of them and held absolute sway for three years; and in 1822 Colombia occupied them, not by rights derived from the Spanish Colonial régime, but by having driven off the pirates. The dependency of the islands could not affect, and did not affect, the Province of Costa Rica.

III.

LAST YEARS OF SPANISH SOVEREIGNTY.

1. First Period of the Constitutional Régime in Spain.

(a) *General Organic Provisions.*

Spain being under invasion, in 1808, by the troops of Napoleon, and Fernando VII absent from the country, the Supreme Central Junta governed in the Peninsula and in America, and recognized the existence of the Province of Costa Rica. This is shown by the summons for the election of deputies in 1809, in which

that province took part (electing for the extraordinary Cortes, Don Florencio del Castillo) and by the appointment of Don Juan de Dios de Ayala as governor of that province in 1810.

America had a numerous and brilliant representation in the Cortes of Cádiz which established the constitutional régime in Spain; indeed, several of its Deputies—among them the same Don Florencio del Castillo—were elevated to the Chairmanship in recognition of their merit, and out of respect for America whose provinces were always looked upon by the Cortes as sisters of those of the Peninsula and subsisting under a common politico-administrative system.

By the side of Don Florencio del Castillo, Deputy for Costa Rica, were the representatives of Guatemala, Nicaragua, Panama and New Granada—Larrazábal, López de la Plata, Ortiz, Mexía Lequerica and Count of Puñonrostro; and when we see that every one assented to the declarations made and the resolutions passed in that body with respect to Costa Rica, we may safely assume that they responded to the actual facts and to the conveniences of the provinces interested. The Deputy for Panama, Don José Joaquín Ortiz, went farther. In his statement to the Cortes, on April 28, 1812 (Doc. No. 475), he confirmed the historical boundaries between Costa Rica and Panama, saying:

“That important Isthmus (of Panama) has, from the village of Chepo, which borders on the country of the wild Indians of Darién, as far as the village of *Boquerón*, in the jurisdiction of Chiriquí, which borders upon the Kingdom of Guatemala, a length of 118 leagues. * * *

The Constitution of Cádiz, of 1812, in its Art. 10 (Doc. No. 205), maintained the separation of Guatemala (which it expressly mentioned) and New Granada (Sante Fé), and preserved the territorial division existing in the Spanish dominions, until another more convenient division should be made by means of a constitutional law, as declared in Art. 11 (Doc. No. 205).

After the Constitution had been adopted the representative Cortes passed two important decrees of a legislative character; one relating to judicial organization and the other concerning provincial government

The Decree of October 9, 1812 (Doc. No. 210) provided in Art. 1 that until a new division of the territory should be made there would be an audiencia in each of the provinces that then had one, and mentioned as still subsisting, the Audiencias of Guatemala and Santa Fé; it declared in Art. 2 that those audiencias should retain the territory they then had, and the same residential seat. The Province of Costa Rica continued, then, to belong to the Audiencia of Guatemala, and preserved the same eastern boundaries, which were the boundaries of that audiencia with that of Santa Fé.

The Decree of May 23, 1812 (Doc. No. 207), established a new provincial régime, and created the superior political chiefs of the provinces and the provincial deputations, as provided for in the Constitution. In pursuance of that decree there was to be a provincial deputation in each of the provinces especially mentioned in Art. 10 of the Constitution and therefore in Guatemala; but in *Guatemala* the decree provided, there was to be another, to be established in León de Nicaragua "with the *Province of Costa Rica*."

This provincial deputation was called that of *Nicaragua and Costa Rica*.

(b) *Continuation of the Dependency of the Northern Coast of Costa Rica Upon the Government of That Province.*

Although in the light of such provisions of a general organic character, it clearly follows that the Province of Costa Rica in no way depended upon Santa Fé or New Granada, we shall have to insist, as regards this northern coast (which Colombia pretends to consider as embraced in the Mosquito Coast), upon adding more proofs of the inefficacy and abrogation of the Royal order of San Lorenzo, of November 20, 1803.

We have already shown how the extraordinary Cortes, at the petition of Don Florencio del Castillo, Deputy for Costa Rica, decreed the opening of the Port of *Matina*, belonging to that province, on December 1, 1811, and how its governor, Don Juan de Dios de Ayala, by order of the Captain-General of Guatemala, stood ready to carry that decree into effect.

The governor continued to act in connection with the Captain-General of Guatemala in everything that related to *Matina*, as shown by his communications of August 5, and October 5, 1813 (Doc. Nos. 212 and 213).

The Provincial Deputation of Nicaragua having been charged with making the provincial division of districts, resolved, as its secretary certifies, to propose the creation of two political sub-chiefs; of these, according to the official communication of its president of April 27, 1814 (Doc. No. 214), to the Minister of *Ultramar* (Affairs Beyond the Seas), one was to be assigned to Granada, where the vessels unload which

arrive at the port of the San Juan river, on one of whose banks it was suggested to locate a settlement of 300 families—and the other in Cartago, capital of the *Province of Costa Rica*, because of its extent * * * “and because upon its coasts, it has the ports of Punta de Arenas on the South and *Matina* on the North.” This resolution demonstrates that the Mosquito Coast continued under the jurisdiction of Nicaragua, and the coast of Matina under that of Costa Rica, and that the establishment of settlements on the San Juan river, referred to in the Royal order of March 31, 1808 (Doc. No. 198), proceeded in due course.

By Decree of April 29, 1814 (Doc. No. 215), the Cortes resolved to open the port of Punta de Arenas, located to the south “of the Province of Costa Rica.”

(c) *Description of the Province of Costa Rica in the Proposal Made by Its Deputy in the Cortes For the Creation of a Bishopric.*

In the session of the Cortes of May 31, 1813, presided over by Don Florencio del Castillo, Deputy for Costa Rica, the proposal of the latter relating to the creation of a Bishopric of that name was read; it begins as follows:

“In the Committee on Affairs Beyond the Seas there is a Memorial from the Noble Municipal Council of the city of Cartago, capital of Costa Rica, which asks for the separation of the said province from the Bishopric of León de Nicaragua to which it is now added, to the end that a separate diocese being created in Costa Rica, there shall be erected and established an Episcopal See in the aforesaid city of Cartago.”

In presenting its arguments, the petition describes the province in general, as follows:

“Costa Rica has for the *boundaries* of its territory the RIVER CHIRIQUI, *which separates it from the Province of Panama*, and the River Salto, which divides it from that of Nicaragua, between which two provinces it is located. It has for its boundaries on the North and the South the Atlantic Ocean and the Pacific Ocean. From one of the rivers that are designated to the other, it is more than 150 leagues, by very rough roads and almost impassable on account of the multitude of mountains and the large rivers that must be crossed. The distance *from one sea to the other* is not uniform, but the average is about 70 leagues.”

The petition goes on to speak of settlements in that province of the number of races among its inhabitants, and sums up by saying:

“For these reasons Costa Rica was *always* considered and held since its *discovery* as a *province separate and independent* from the others; governed in political and military affairs by a chief with the title of *Governor and Comandante de las Armas*, who *recognized no other dependency than upon the Audiencia and Captaincy-General of Guatemala*; so that it is *only in ecclesiastical matters* that it has been added to the diocese of Nicaragua.”

It is impossible to describe in a more concrete and positive manner the status of the Province of Costa Rica in 1813; and that status conforms perfectly with the status which, according to the evidence adduced from the great mass of official documents we have cited, *always* subsisted.

2. Absolute Government of Fernando VII.

Fernando VII on his return to Spain, in 1814, after the evacuation of the Peninsula by the French, annulled all the acts of the constitutional régime, and re-established the absolute government that had previously existed.

He left Don Juan de Dios de Ayala as Governor of the Province of Costa Rica, and, in 1818, appointed to that office, Don Bernardo Vallarino. On the death of the latter, the Audiencia of Guatemala filled the office temporarily, by the appointment of Don Juan Manuel de Cañas.

The Governor of Costa Rica continued in authority on the coast and at the Port of *Matina*, keeping in communication with the Captain-General of Guatemala, as may be seen by various official communications from 1815 to 1819 (Doc. Nos. 218, 219, 220, 225, 226, 227 and 229). By Royal cédula of May 26, 1818 (Doc. No. 228), addressed to the Captain-General of Guatemala, the King commanded a report to be made in regard to the amendment of the impost upon cacao derived from the Valley of *Matina*.

The territory of *Talamanca* continued to belong to the Province of Costa Rica, as shown by the account given by Fray Ramón Roxas, *Comisario prefecto* of the Missions, to the Bishop of Nicaragua, dated July 3, 1815 (Doc. No. 217); in this he tells the Bishop that “* * * the reduction of *Talamanca* is upon the borders of this diocese, on the side adjacent to that of *Panama*,” and relates how the governors of Costa Rica protect the missions of *Talamanca*.

Although the Cortes was dissolved, Fernando VII by Royal order of June 17, 1814, exhorted those who

had been deputies of the American provinces, to submit to him the petitions that they had pending, and any other matters pertaining to their respective provinces. This was done by Don Florencio del Castillo, ex-Deputy for Costa Rica, in his statement to the King of July 12 of the same year (Doc. No. 216), in which he reproduces what he had presented to the Cortes on May 31, 1813, repeating the paragraphs that we have transcribed regarding the limits of Costa Rica and insisting that it had always been a province separate from the rest, ruled by a governor dependent solely upon the Captaincy-General and Audiencia of Guatemala.

By Royal cédula of May 26, 1818, in accord with the Council of the Indies, Fernando VII commanded the Captaincy-General of Guatemala to report concerning the proposal of Don Florencio del Castillo respecting the creation of a Bishopric of Costa Rica, and took counsel with the Intendant and the Bishop of Nicaragua, the *Fiscal* (Attorney General) and the Audiencia of Guatemala, in order to determine what was best to be done.

3. Second Constitutional Period.

The Constitution of Cádiz was re-established in 1820, and with it the Provincial Deputation of Nicaragua and Costa Rica; whereupon that deputation on December 13, 1820 (Doc. No. 476), again took up the proposition for the division by districts (enumerating the principal places of each) and the creation of political sub-chiefs. In the note accompanying the communication concerning those matters addressed to the Minister of Affairs Beyond the Seas, it is shown that

the Province of Costa Rica was under the charge of a political and military governor independent of the Governor of Nicaragua, save in the matter of *Hacienda* (Finances), of which a sub-intendant had charge under the Ordinance of 1786, and he depended upon the Intendancy-General of Nicaragua. By Royal order of February 27, 1822, it was directed that this plan be forwarded to the Minister of the Interior for investigation.

In the session of the Cortes of May 17, 1821, Don José Mariano Méndez, Deputy for one of the Guatemala districts, presented a memorial of which he was the author, entitled, "*Memorial of the Political and Ecclesiastical Condition of the Captaincy-General of Guatemala*, a Plan for the Division into Eight Provinces, With as Many More Provincial Deputies, Political Chiefs, Intendants and Bishops," which memorial, according to the records, was favorably received by the Cortes and referred to the Committees on Provincial Deputations, Ecclesiastical Affairs and Finance.

This very interesting memorial (Doc. No. 230) begins by saying:

"*Guatemala*, situated in Northern America, longitude from 282 degrees to 295 degrees, and latitude from 8 degrees to 17 degrees, has a length of 13 degrees, which makes 227 Castilian leagues of $17\frac{1}{2}$ to the degree; and by road it is calculated at more than 700 leagues from Chirilillo, the end bordering with the Audiencia of Mexico, as far as CHIRIQUI, the *frontier line of the jurisdiction of the Audiencia of Santa Fé de Bogotá*. In width it is 9 degrees, from the southern territories of Costa Rica to the northern ones of Chiapa. * * * It borders on the West with the Intendancy of Guaxaca; on the

East with the *Province of Veragua*, district of Tierra Firme and Santa Fé; on the North with the Ocean and on the South with the Pacific."

It then goes on to explain that

"* * * throughout the extent of this Kingdom there is but one Audiencia, which sits in the capital of Guatemala, with its Captain General, who has a large number of subordinate chiefs for the political and military administration and Government of the fifteen provinces into which it is divided."

This number is made up of eight *alcadías mayores*, two *corregimientos*, the Government of *Costa Rica* and the *Intendancies* of Nicaragua, Chiapa, Comayagua de Honduras and San Salvador.

It indicates the inconveniences of this division and suggests that eight provinces be created, each with its respective civil and ecclesiastical authorities.

Of the Province of Costa Rica—the first of the eight—he speaks as follows:

"This city (of Cartago) is the capital of the province of Costa Rica, situated in the center, at 80 leagues from the frontier line of Nicaragua and as many more from that of *Costa Firme*, jurisdiction of *Veragua*, and at thirty leagues from the Port of Esparza on the South Sea, and at a like distance from that of *Matina*, on the North Sea; so that the total length is 160 leagues and the width 60. * * * In 1813, its Deputy in the Cortes endeavored to have it erected into a Bishopric * * * and this same effort was repeated in the present Cortes, asking for a Provincial Deputation * * *; its better administration and government can only be at-

tained by means of a Provincial Deputation, Political Chief, Intendant, University, College and Bishop without canons."

IV.

THE INDEPENDENCE AND THE "UTI POSSIDETIS."

1. Independence of the Provinces of Guatemala and New Granada.

During this second constitutional period, Costa Rica was emancipated from the sovereignty of Spain.

The news of the Spanish revolutionary movement of 1820, revived the insurrection of Mexico which had been suppressed; General Itúrbide placed himself at its head and on February 24, 1821, put forth the manifesto of Iguala (Doc. No. 243), proclaiming the independence of Mexico. Following this example, Guatemala also declared itself independent of Spain, in September, and Costa Rica, in October, of the same year (the governor then being Don Manuel de Cañas).

General Itúrbide caused himself to be proclaimed Emperor of Mexico, with the name of Augustin I, in May, 1822. The provinces of the old Captaincy-General of Guatemala joined the new Mexican Empire; but on the dissolution of the latter, in March, 1823, they united and sent representatives to a constituent assembly which, in July of that year, ratified their independence from both Spain and Mexico. That assembly adopted the Constitution of the *United Provinces of the Center of America*, of November 22, 1824 (Doc. No. 254), thus forming a republican confedera-

tion composed of five States: Guatemala, Salvador, Honduras, Nicaragua and *Costa Rica*, each of which had its own constitution.

This confederation lasted for fourteen years, until the federal compact, having been broken by the congress of 1838, there were born the five *republics* that now bear those names, each with an entirely independent life.

The insurrectionary movement of the provinces of the Viceroyalty of New Granada was distinct. It had its principal center in Santa Fé de Bogotá which, in July, 1810, rose against the viceroy and attempted to form a confederation of those provinces. The movement, however, failed of success until Bolívar, who had achieved the independence of Venezuela, placed himself at its head. The Congress of Angostura (in Venezuela), of February 19, 1819, decreed the formation of the *Republic of Colombia*, with the provinces of Venezuela and New Granada. The Congress of Rosario de Cúcuta approved the Constitution of this Republic on August 30, 1821.

The Province of *Panama*, where the Viceroy, Sámano, was established, was proclaimed independent of Spain, in November, 1821, and agreed to cast in its lot with the Republic of Colombia.

So, that, *in November of 1821*, the sovereignty of Spain ended in the two provinces of *Costa Rica* and *Panama*, bordering on the two viceroyalties and audiencias, each, on its emancipation, attaching itself to those provinces with which it had been united—Costa Rica with the *Guatemala* provinces; Panama with those of *New Granada*.

2. The Principle of Colonial "Uti Possidetis."

"*Uti possidetis*" was the term used in the Roman law to designate the interdict of *retention* of possession which the praetor pronounced, in the interest of the holder of property, to protect him in his possession so long as he was not defeated in a trial of ownership, using a long phrase which was condensed into these words, "*uti possidetis, ita possideatis*;" that is, "as ye possess, so may ye possess (so may ye continue possessing)."

This term, "*uti possidetis*," having been adopted into international law, serves to designate the principle of "the conservation of the possessory status" in international relations. The principle of the "*colonial uti possidetis*" signifies the recognition of the *possessory status* in which the provinces or regions were found when they were colonies, and the *continuity* thereof after they had been emancipated and formed independent states.

The importance of this principle may be easily understood in the demarcation of the states that sprang into existence in America upon the cessation of Spain's sovereignty. Those states had no other history than that of the colonial period; but during that period they had formed themselves into communities, with their own customs, traditions and social and administrative institutions that differentiated each from the others. It was but natural, therefore, that they should continue to live as they had lived—in the same territories and undergoing no other change than that involved in the acquisition of sovereignty, or such changes as they might wish to establish in the exercise of such sovereignty.

All the territory of the Indies had been divided by the Sovereigns of Spain into viceroyalties, audiencias and governments of various classes, within the respective demarcations of which, those communities were formed, each with vast areas to be settled. The provinces emancipated themselves as best they could; those of one great circumscription united or passed voluntarily from one circumscription to another, or separated among themselves, and constituted themselves into independent republics. When the common sovereign power was withdrawn, it became indispensably necessary to agree on a general principle of demarcation, since there was a universal desire to avoid the resort to force, and the principle adopted was the *colonial uti possidetis*; that is, the principle involving the preservation of the demarcations under the colonial régime corresponding to each of the colonial entities that was constituted as a state. Thus, also, it prevented the seizure by foreign nations of any of those vast unsettled territories.

The principle of *uti possidetis* was introduced reciprocally into the relations of the American republics of Spanish origin by the Treaty of Bogotá, of 1811, entered into by the United Provinces of Venezuela and the United Provinces of New Granada; in that instrument they undertook to recognize and respect as the boundaries between those that pertained to the Captaincy-General and Viceroyalty bearing those names— a principle that was extended over the whole of Latin America.

But if there was general accord in the acceptance of that principle, difficulties arose in its application, mainly concerning the character of the possessory status and the date to be taken, each republic insisting

upon what was most desirable for its own interests according to the situation in which it found itself.

3. Application of the Principle.

Further exposition of this doctrine of the *uti possidetis*, which pertains to the international law of Latin America, is unnecessary, since we address ourselves, in this opinion, to the colonial Spanish law; still we set forth the situation of Costa Rica in order to apply that principle.

The fundamental law of the State of *Costa Rica*, of January 21, 1825 (Doc. No. 255) expressed perfectly the equation between its territory and that of the Spanish province of that name; it fixed its limits in the same way that they existed in fact and law, at the moment when the sovereignty of Spain came to an end. In its Art. 15 the law provided:

“The territory of the State is now extended from West to East, from the River Salto, which divides it from Nicaragua, to the River *Chiriquí*, the end of the Republic of Colombia; and North-South from one Sea to the other, its limits being on the North at the mouth of the River San Juan and the *Escudo de Veragua*, and on the South at the outlet of the River Alvarado and that of *Chiriquí*.”

The expression “now,” used in connection with Nicaragua, was adopted because the addition of Nicoya was expected, that province having manifested its desire to unite with Costa Rica; and it was in fact so united by decree of the Federal Congress of the Republic of Central America of December 9 of the same year (Doc. No. 258).

That fundamental law of Costa Rica harmonizes with the law of territorial division of the Republic of *Colombia*, of June 25, 1824 (Doc. No. 251), which had respected the limits of the former State. Colombia divided her territory into twelve departments, subdivided into provinces composed of cantons. The Department of the *Isthmus* was made up of two provinces: That of Panama and that of Veragua. The Province of *Veragua* was divided into four cantons—Santiago de Veragua, Mesa, Alanje and Guaimí. All these cantons were located to the east of Costa Rica, including that of Guaymí which was another portion of the valley of that name, and had for its capital, the town of *Remedios*.

A few days after this law was published, the Government of Colombia issued the Decree of July 5, 1824 (Doc. No. 252), declaring illegal "every enterprise which is undertaken to colonize any point of that portion of the Coast of Mosquitos from Cape Gracias á Dios, inclusive, toward the River Chagres, which belongs to the Republic of Colombia, in virtue of the formal declaration made at San Lorenzo on November 30, 1803." It was sought by this action to give life to the Royal order relating to the Government of the Islands of San Andrés, which had died still-born and to which no one had paid any attention during the colonial period; the nullity and inefficacy of that Royal order with respect to Costa Rica we have already demonstrated. And it must be observed that it was not taken into consideration in making the law of territorial division which was prepared and sanctioned at that time.

On March 15, 1825 (Doc. No. 257), was signed in Bogotá the treaty between the Republic of Colombia

and the Federal Republic of Central America of which the State of Costa Rica formed a part, and by which the latter republic bordered on the former. The parties mutually guaranteed the *integrity* of their respective territories "*as they existed naturally* prior to the present war of independence," and obligated themselves to respect their boundaries "*as they now exist*;" they also agreed to the reservation, "as soon as circumstances will permit, to settle in a friendly manner the line of demarcation between the two states, or whenever one of the parties shall be disposed to enter on this negotiation."

In the conferences held during the negotiation of that Treaty of 1825 the Minister of Foreign Relations of Colombia, Don Pedro Gual, proposed a change in the existing boundaries based on the proposition to give effect to the Royal order of 1803. The Minister Plenipotentiary of Central America, Don Pedro Molina, replied that he was without instructions on this point. "Well, then, responded Señor Gual, as to boundaries it is necessary to hold to the *uti possidetis* of 1810, or 1820, as may be desired. Señor Molina having acquiesced, Señor Gual was charged with preparing the articles arranged at the time of making this project." It is thus set forth in the protocol of the conference between the two representatives of March 4, 1825 (Doc. No. 256).

From the foregoing it appears that both parties were agreed in recognizing, in 1824 and 1825—three or four years after the independence—as the boundaries existing in fact between the Spanish Provinces of Costa Rica and Veragua at the moment of independence, the same boundaries which they promised to respect and mutually adhere to. The Colombian law of territorial

division, of June 25, 1824, did not go beyond the boundaries of Veragua; the fundamental law of Costa Rica of January 21, 1825, included from sea to sea, as far as the Escudo de Veragua and the Chiriquí (*Viejo*) river; and the Treaty of Bogotá of May 15, 1825, preserved the existing boundaries, without making the changes which the Minister of Colombia had claimed on the authority of the Royal order of 1803.

The principle of *uti possidetis*, then, was accepted by common consent in the sense of preserving the possessory status, Colombia declaring that whether the year 1810 or 1820 be adopted in connection with that status should be "as it might be desired to understand it." This is easy enough to understand because the change proposed by Colombia not having been adopted, it was a matter of indifference which date should be selected, that possessory status being the same in both periods.

But Colombia's ambition to extend herself into Central America, grew apace. Taking advantage, therefore, of the discord that prevailed among the States of the Federation, in 1836, she treated the territory of Bocas del Toro and all its islands as her own, and occupied them with force. To justify such ambitions and the acts that were committed in carrying them out, Colombia, resorted to the Royal order of San Lorenzo, of 1803, on the assumption that it constituted the *uti possidetis de jure* of 1810, and that under its sanction she was entitled to the dominion (which had pertained to the Viceroyalty of Sante Fé) over the Atlantic coast from Cape Gracias á Dios towards the Chagres river, including the Matina Coast.

Colombia, therefore, interpreted the principle of *uti possidetis* in the sense of the preservation of the

right of *ownership* instead of that of *possession*; whereas, the fact is that that principle, as its name indicates, and in consonance with the interdict from which it is derived requires as an indispensable condition "the fact of being in possession." The right to property, unaccompanied by possession, may be ground for *recovery*, but never for the interdict of retention or the right to preserve possession that is lacking.

The Republic of Colombia, by combatting the interpretation of the *uti possidetis* in the sense of preservation of the possessory condition *de facto*, and alleging in favor of herself rights of ownership founded upon laws and Royal orders, recognizes that the Viceroyalty of Santa Fé had not been *in possession* of the territories which she has claimed as its heir.

Colombia asks in the arbitration that the question of boundaries with Costa Rica be decided by the principle of *uti possidetis de jure*, asserting in her documents that according to the *Recopilación de Indias* the Government of Costa Rica *must* have belonged to that of Tierra Firme, by having been embraced within the Province of Veragua, which belonged to Tierra Firme, and that under the Royal order of 1803, the Government of the Mosquito Coast and that of the Atlantic coast of Costa Rica *must* have belonged to the Viceroyalty of Santa Fé. But she does not say that the Government of Tierra Firme had jurisdiction over Costa Rica subsequently to the creation of the Audiencia of the Confines, or of Guatemala, nor did the Viceroyalty of Santa Fé exercise even partial control therein; and she could not state this, since it is entirely contrary to the truth of history.

The territory and boundaries possessed by Costa Rica at the moment of her emancipation, she held by

virtue of legal titles, having been definitively constituted by her historic evolution as a province, and having lived continuously under that legal status sanctioned and confirmed by a long series of acts of jurisdiction and sovereignty.

That is why Costa Rica, although she understands that the *uti possidetis* cannot be conceived without possession, has accepted in this arbitration the so-called *uti possidetis de jure*, because she has in her favor the *uti possidetis* not only *de jure*, but *de facto*. The description of its territory, which the State of Costa Rica gave in Art. 15 of its fundamental law of January 21, 1825, accords with the descriptions we have given of the territory embraced therein in fact and law, when it was a Spanish province, to wit, from sea to sea, from Nicaragua to the *Escudo de Veragua* on the north and the mouth of the *Chiriquí (Viejo)* on the south. Such was its *possessory status* when, on the 15th of March of the same year, in Bogotá the treaty was signed by the Republic of Colombia and the Federal Republic of Central America; in that treaty the boundaries that "then existed" were recognized, and the parties mutually guaranteed their respective territories.

Colombia claims that the *uti possidetis* of all Spanish America refers to the year 1810, because it was then that the insurrectionary movement began which led to the Treaty of 1811. In that treaty the provinces of Venezuela and those of New Granada undertook to recognize and to respect as boundaries between themselves those belonging to the captaincy-general and viceroyalty. But the principle of *uti possidetis* having been proclaimed to enable the new states to accept as boundaries those which their respective provinces

had possessed when they were emancipated and thus establish the continuity of possession, it could not be applied to all as of the same date, but as of the date of the emancipation of each province or region which became a state, for until their emancipation they continued under the sovereignty of Spain who could freely dispose of them.

The insurrectionary movement of 1810 was repressed by Spain, and this same Republic of Colombia was not born until December, 1819, nor was she definitively constituted as a sovereign state until August, 1821. The Province of Guatemala proclaimed itself independent on September 15, 1821; those of Costa Rica and Panama, in October and November of the same year. Therefore, if a common date be adopted for the *uti possidetis* of the provinces that figure in the question of boundaries, it must be the year 1821.

Costa Rica very properly insists on the *uti possidetis* of 1821, although she would be under no disadvantage were that of 1810 adopted, for her possessory status as to boundaries was in fact and law, the same in one year as in the other.

RESUME AND CONCLUSIONS.

Summary.

1. Résumé and General Conclusions of This Opinion.
2. Agreement Respecting the Legal Bases For the Determination of the Case.
3. Question of Territoriality.
4. Question of Delimitation:
 - (a) Costa Rica's Evidence.
 - (b) Colombia's Evidence.

(c) Special Consideration of the Boundaries of
the Dukedom of Veragua.

5. Final Deductions.

1. **Résumé and General Conclusions of This Opinion.**

We believe that we have demonstrated the three following propositions, which constitute the three parts into which we have divided this work:

1. The Province of Costa Rica and that of Veragua were definitively established and marked out by the Crown in the XVIth Century, in the year 1537.

2. The *Recopilación de Indias* respected and confirmed the existence and demarcation of Costa Rica.

3. Costa Rica continued in the same legal status of differentiation from Veragua, from the publication of the *Recopilación* down to the independence.

These propositions are the synthetic résumé and the general conclusions of our opinion.

The clearness with which we think we have presented the facts and the law relating to each of these propositions, by means of the appropriate headings and summaries, as also the categorical form used in the statement of our opinion upon each of the questions embraced in each proposition, renders unnecessary a fuller résumé or a more extensive statement of the conclusions of this opinion; we respectfully refer to the discussions of the points in the text.

We shall, however, state our conclusions as to the results of the arguments made in the arbitral proceedings on the three questions following, which are the very essence of the case—the legal basis for its determination, territoriality and the boundaries properly so-called.

2. Agreement Respecting the Legal Bases For the Determination of the Case.

We have just seen that both parties are agreed in accepting, as the legal basis for the determination of the case, the principle of the *colonial uti possidetis*, as of the year 1810, although Costa Rica holds, as do we, that it ought to apply to the year 1821. And we have also seen that Costa Rica finds no difficulty in admitting the application of this principle from the point of view of law (*de jure*), but it must be jointly with the fact of possession (*de facto*); for we consider that without possession the *uti possidetis* is inconceivable. Both parties are also agreed in recognizing as a legal basis what was provided by the *Recopilación de Indias* and the Crown of Spain in the exercise of the legislative power. The difference of opinions consists in the fact that Colombia denies legal force to the demarcatory provisions prior to the *Recopilación*, conceding it to others which are subsequent, whilst Costa Rica maintains the contrary, according to the character of the acts under discussion.

In our opinion the *Recopilación de Indias* is really the axis of the jurisprudence with which we are concerned. The history of Spanish colonial law is divided into three periods: The law prior to the *Recopilación*, that established by the *Recopilación* and that subsequent thereto. And to these three periods of that history we have made the three parts of our opinion correspond. Of the law prior to the *Recopilación*, not only that which, as Colombia assumes, is expressly re-enacted, is valid, but also that which is respected, confirmed or admitted as supplementary. Of the laws provided after the *Recopilación* only those are valid

which conform to the laws in that compilation, or their amendments, under the conditions and procedure established by it.

3. Question of Territoriality.

The legal criterion under which the case must be decided having been established, it is important to distinguish two questions which have been confused under the common designation of "question of boundaries:" That of *territoriality* and of *delimitation*; that is to say, the question of ownership of a determined territory (a geographical, political or administrative unit), and that of the marking out of the divisional line which separates it from another or several other territories.

It clearly results from the argument in the arbitral proceedings, that Colombia does not treat the question of boundaries properly speaking, but that of *territoriality*. Colombia denies the territoriality of Costa Rica: first, *entirely*, on the authority of the *Recopilación de Indias*; and afterwards, *partially*, invoking the Royal order of 1803. In order to deny it entirely, she makes use of a geographical equivoque based upon the name of *Veragua* by taking for the "Province of Veragua" the primitive Veragua. In order to deny that territoriality partially, she gives to the *Mosquito Coast* an extent it did not have.

We cannot reconcile this method of attack to a proceeding international in character, except on the theory that it is resorted to in pursuance of the time-worn maneuver of asking for everything in order to obtain something; for, were Colombia to succeed in producing the conviction that all the territory of the State of

Costa Rica ought to be adjudicated to her by virtue of old colonial rights, the Arbitrator could not, in determining a conflict of boundaries annul or almost annul the existence of a *State* which had been formed by the sovereignty of an emancipated people, which has been recognized in the integrity of its territory by the other State, and which voluntarily, in its own personality, has agreed with that other State upon an arbitration which is to the tracing of a divisionary line between their respective territories.

It was fully proved in the arbitral proceeding that from the primitive Veragua were formed three distinct provinces: the Province of *Veragua* (the only one that retained that name), constituted as such in 1560, with its governor and captain-general and having for its domain the territory of the Dukedom of Veragua; the Province of *Costa Rica* which began by embracing the whole of Royal Veragua, formed by virtue of the commission granted by Philip II to Cavallón, in 1561, and instituted as such province with its governor, captain-general, in 1565, and definitively organized by means of the Government of Artieda, in 1573-1574, upon the segregation of the territory situated to the north of the Desaguadero or San Juan river, and the Province of *Teguzgalpa* which was created, in 1576, out of the segregated territory that was called later the *Mosquito Coast*.

It has been also demonstrated that the Province of Costa Rica and that of Veragua existed as distinct provinces, with their respective territories and with different governors, from the time of their definitive constitution until the termination of the colonial period; and, furthermore, that each depended upon a different superior government—the Province of Costa

Rica upon the Viceroyalty of Mexico and Captaincy-General and Audiencia of Guatemala and the Province of Veragua upon the Viceroyalties of Peru and New Granada and Audiencias of Panama and Santa Fé.

The *Recopilación de Indias*, far from suppressing the Province of Costa Rica, as Colombia pretends, confirmed its existence and mentioned it expressly as a distinct province from that of Veragua. The Province of Veragua, which the *Recopilación* declares is embraced in the Government of Tierra Firme, was the one that sprang from the dukedom; whereas, that of Costa Rica continued dependent upon the Audiencia of Guatemala, as it is also expressly provided in that code.

Colombia contradicts her own argument of the legal non-existence of the Province of Costa Rica, when she alleges that the Royal order of San Lorenzo, of November 20, 1803, segregated from the Superior Government of Guatemala the Atlantic part of Costa Rica as embraced in the Mosquito Coast, in order to add it to the Viceroyalty of Santa Fé; for this is equivalent to recognizing that Costa Rica legally existed without belonging to the Viceroyalty of Santa Fé, and that only that portion passed into dependency upon it, the rest remaining under the jurisdiction of Guatemala.

It has been proved that the Royal order of 1803 did not refer to Costa Rica, since the latter did not form a part of the Mosquito Coast; that the order had only a military and transitory character; that it could not change the laws of territorial division, and that it was inefficacious, contradicted and abrogated.

The Spanish Province of Costa Rica, emancipated in 1821, brought to the Federal Republic of Central America (which it formed with the other provinces of

the Old Kingdom of Guatemala) the very same territory that it had, in fact and in law, as such Spanish province, and with that same territory belonging to the State of Costa Rica, the Republic of Central America was recognized by the Colombian Government in the Treaty of 1825.

4. Question of Delimitation.

(a) *Costa Rica's Evidence.*

The Republic of Costa Rica, as appears in Art. 2 of the Convention of January 20, 1886, has claimed in the arbitration as the line dividing her territory from that of Colombia: on the Atlantic side, the line indicated by the Island of Escudo de Veragua and the Chiriquí (Calobébora) river, inclusive; and on the Pacific side, the Chiriquí Viejo river, inclusive, to the east of Punta Burica. That line is the one fixed by the fundamental law of the State of Costa Rica of January 21, 1825, and with which the Republic of Central America was recognized by Colombia in the Treaty of May 15 of the same year. And that same line is the one which separated the Province of Costa Rica from that of Veragua under the colonial régime, being also the divisionary line of the viceroyalties and the bordering audiencias.

The legality of this delimitation is based upon Law 1, title 1, book V, of the *Recopilación de Indias* (Doc. No. 131); in that law, enacted by Carlos II when that code was published, it was ordered that the viceroys, audiencias, governors and *alcaldes mayores* should keep and respect the *boundaries* of their jurisdictions "as they may be fixed by the *Laws* of this book, the *Titles* of their offices, the *Provisions* of the Superior

Government of the Province, or by *use and custom* legitimately introduced."

The Republic of Costa Rica has fully proved in the litigation that from the demarcation of the province of that name, made in Artieda's *capitulación* of 1573, and his title of governor, granted in 1574, the *boundaries* of that province were the line of the Island of the Escudo de Veragua and that of the Chiriquí (Calobébora) river, on the Atlantic side, and the Chiriquí Viejo river (or rather, the Valleys of the Chiriquí, inclusive), on the Pacific side, and therefore existed at the time of the publication of the *Recopilación de Indias*, as shown by the acts of sovereignty exercised by the monarchs, the titles of the offices of the governors, the provisions of the superior government of the provinces, and the rights based on custom.

The laws of the *Recopilación* did not establish any different boundaries; and in respecting all the Royal cédulas which were not in contradiction therewith, the Royal cédulas demarcatory of boundaries remained in force without denying efficacy to the *capitulaciones*, the validity of which was recognized in so far as they were not in contradiction with the laws of the *Recopilación*, those *capitulaciones* being considered, taken together, as a system governing discovery, settlement, pacification and government of the territories of the Indies.

As a result of the creation of the Viceroyalty of New Granada, and the incorporation of the Audiencia of Panama in the Audiencia of Santa Fé, the proof of the boundaries of the Province of Costa Rica is strengthened with the descriptions of the boundaries of that viceroyalty and of the audiencia that reached



*BOUNDARIES OF COSTA RICA
IN 1821*

*AS MODIFIED IN FACT
BY HISTORIC EVOLUTION*

as far as that province, harmonizing with all the antecedents from the demarcation assigned to Artieda.

This is shown from the "Description of the Kingdom of Tierra Firme," by the *Comandante general* of Panama, Don Antonio Guill, in 1760; from the "Description of the Viceroyalty of Santa Fé," by its Viceroy, the Marquis de la Vega de Armijo, in 1772; from the "Report" by the Governor of Veragua, Don Félix Francisco Bejarano, in 1775; from the "Descriptions of the Viceroyalty of Santa Fé, of Tierra Firme and of Veragua," in the most interesting work relating to southern America, by the missionary, Sobreviela, in 1796, and by the "Official Communication" of the Governor of the Islands of San Andrés, Don Tomás O'Neill, in 1802.

The boundaries of the Province of Costa Rica continued unchanged in the last years of the Spanish sovereignty, for it has been shown by official documents that that province continued to embrace the territory from sea to sea, including the Matina Coast and the region of Talamanca, and that the Royal order of 1803 produced no change whatever in the traditional demarcation.

Colombia recognized Costa Rica to be in possession of boundaries, the extreme points of which were the Island of the Escudo de Veragua and the mouth of the Chiriquí Viejo river, by the *uti possidetis* of the Treaty of 1825, and by the fact that, at the moment of the emancipation, she immediately set up against this *uti possidetis de facto* the *uti possidetis de jure*, as though Costa Rica possessed such limits without authority of law. It has been demonstrated that Costa Rica has in her favor, not only the *uti possidetis de*

facto, but the *uti possidetis de jure*, based upon the *Recopilación de Indias* and the provisions which the latter respected or confirmed, or which were issued in accordance therewith.

(b) *Colombia's Evidence.*

The abundant proof submitted by the Republic of Costa Rica as to her boundaries presents a strong contrast to the almost complete lack of evidence on the part of Colombia; because, as we have said, she does not occupy herself with the question properly of boundaries, but with the *territoriality*.

As appears in Art. 2 of the Convention of 1886, the Republic of Colombia has claimed in the arbitration, as her territorial limit: on the Atlantic side, as far as Cape Gracias á Dios, inclusive; and on the Pacific side, to the mouth of the Golfito river in Dulce Gulf.

To claim from Dulce Gulf in the Pacific to Cape Gracias á Dios in the Atlantic, is not only equivalent to asking for all the territory included between the said Gulf, the Chiriquí Viejo river, the Escudo de Veragua and the Culebras river, but also for the whole Atlantic coast of Costa Rica and Nicaragua, and Colombia exposed herself, besides, when attempting to unite the two extreme points of her claim, to invade Costa Rican territories *not included* in the boundary dispute, as she effectively did in the demand presented to the French Arbitrator. It is true that Colombia has left out the rights of third parties, and therefore of Nicaragua, stopping at the Desaguadero, or San Juan river, the boundary between Nicaragua and Costa Rica. But in her eagerness to justify her right as far as Cape Gracias á Dios or the Desaguadero, she has failed to prove

her boundaries with Costa Rica, by creating herself mistress of the whole of primitive Veragua.

When Colombia invokes the Royal order of San Lorenzo of 1803, to maintain her point that the Atlantic portion of Costa Rica had been incorporated to the Viceroyalty of Santa Fé—whereby she recognized that the portion on the Pacific side continued separated from that viceroyalty—it would seem that she was under obligation to fix the divisionary line between one portion and the other, but she never has done so, forgetting doubtless, that this Royal order did not establish such divisionary line, because not demarcatory of boundaries.

So that Colombia has been left in this arbitral proceeding in the same situation as would be the owner of a piece of property who, in litigating with an adjoining owner, refused to prove the divisionary line between two properties, on the ground that *both* belonged to him; and the Arbitrator will be found in the situation in which the judge would be left, who, holding the ownerships to be distinct, and unable to recast them into a single one, had to mark out the properties in face of the fact that one of the holders had proved his divisionary line, whilst the other had not.

A judge placed in such a position might perhaps be perplexed to decide a question of boundaries, properly speaking, through fear of being unduly inclined on the side of the one who presented the proof. But that fear cannot exist in the present case, for two reasons: (1) because Colombia has discussed the evidence of Costa Rica under conditions even more advantageous, since she presented a third brief and a summary of conclusions in the arbitral proceedings, of which brief and summary Costa Rica had no notice except by the Award

and was therefore unable to refute them; and (2) because Colombia, although she may not have made direct proof of her divisionary line, offered indirectly a most valuable proof in the very title which she alleges as the basis of her rights and which may be used to take bearings from in order to decide with more assurance: we refer to the proof of the limits of the Dukedom of Veragua.

(c) *Special Consideration of the Boundaries of the Dukedom of Veragua.*

Those boundaries are established by the Royal cédula of Carlos V of March 2, 1537, which is cited by Law 9, title 1, book V, of the *Recopilación de Indias* as a precedent for its text, in order to indicate, in our opinion, the origin of the Province of Veragua.

Colombia maintains that when that law declared that the whole Province of Veragua should belong to the Government of Tierra Firme, it referred to the primitive Veragua, in which Costa Rica was embraced. Costa Rica affirms that the law referred to the Province of Veragua as it was constituted at the time of the publication of the *Recopilación de Indias*, in 1680, and maintains that that province is the Dukedom of Veragua. And having proved that Panama cannot claim any other province of Veragua than the one arising out of the dukedom, she must resign herself to defending, as boundaries of this province, those which Colombia has recognized as limits of the dukedom by invoking the Royal cédula of 1537.

According to that Royal cédula, the divisionary line between Panama and Costa Rica would be the straight line from the west side of the square of 25 leagues,

opposed to that which might be traced upon the meridian of the Belén river (inclusive), embraced between the parallels of the extremes and at a distance of 25 leagues.

The meridian corresponding to the mouth of the Belén river, being that of $80^{\circ} 51'$ west of Greenwich, and the mouth being on the parallel of $8^{\circ} 54'$, that divisionary line, at the distance of 25 leagues, would be indicated by the meridian of $82^{\circ} 6'$, starting from the same parallel in the southern direction, and counting by 20 leagues to the degree. If the league is counted at the rate of $26\frac{1}{2}$ to the degree, that divisionary line would recede toward Panama, the leagues being smaller. If the league is counted at the rate of $17\frac{1}{2}$ to the degree, the divisionary line would advance upon Costa Rica, the leagues being longer, in which case (and the most favorable one for Panama) the dukedom would not extend beyond the meridian of $82^{\circ} 15' 42''$ west of Greenwich, starting from the same parallel of $8^{\circ} 54''$.¹

Costa Rica, in designating the position of the mouth of the Belén river has made use of the most recent and exact maps of the English Admiralty Office, officially adopted by the Government of Panama, as may be seen even in the "Map of the Republic of Panama, prepared by Don Ramón M. Valdés and Don Andrés Villarreal for the text of the Geography adopted by the Government of Panama," and published after the

¹ This point is resolved by an unquestionable document furnished by Panama itself. We refer to the "Mapa de la República de Panamá" published in 1910 by Don Ramón M. Valdés. On this map are very clearly traced the *limits of the ancient Dukedom of Veragua* and the divisional line with Costa Rica is indicated by the meridian $81^{\circ} 58' 03''$ west of Greenwich.

Award of M. Loubet, and in which that point is fixed at 80° 50' 40" from Greenwich.

Against the rational geographic proof of Costa Rica on this point, Colombia alleged that this should not be the position of the Belén river because a settlement of that name appears much further to the west in a map drawn by Diego Ribero in 1529; but even this argument becomes futile if the map of Diego Ribero, cited by Colombia is examined without prejudice and as it was found in the library of the Grand Duke of Weimar. Ribera did not trace the Belén river, and in his map this name is applied to a place or vast area of water, which may well be estimated at 25 leagues to the east of Zorobaró, if there is taken into account the defective and diminutive scale of the *Carta Universal* (Universal Chart).²

And even though no map were in existence, that distance of 25 leagues from the Bay of Zorobaró, which results from the account of the voyage of Columbus, and which the Council of the Indies must have taken into account in laying out the dukedom, would always be a very important factor.

It is not our purpose to enter into a technical discussion as to whether the *Spanish leagues* of the XVIth century were of 26½ to the degree, as Jorge Juan believed, or 17½, as was maintained by the illustrious General of the Armada, Don Pelayo Alcalá Galiano, in his "Considerations Concerning Santa Cruz de Mar Pequeña," of 1879, based among other data, on the fact that the league of Burgos was the one adopted in the Conferences of Badajoz concerning the demarca-

² The learned commentary of J. G. Kohl upon the *Carta Universal* of Diego Ribero shows the error of Colombia. Vide: "The Two Oldest Maps of America, etc.," by J. G. Kohl, Weimar, 1860.

tion of the Spanish and Portuguese dominions in 1524, as pointed out by Humboldt. It is enough for us to repeat that even accepting the league of $17\frac{1}{2}$ to the degree, the divisionary line of the dukedom would not penetrate into Costa Rica further than $82^{\circ} 15' 42''$.

Comparing now the divisionary line asked for by Costa Rica in the arbitration with that of the dukedom, the result is: that on the north side it goes beyond that of the dukedom, and reaches that of the Escudo de Veragua and of the Chiriquí or Calobébora river (meridian $81^{\circ} 34'$ of longitude west of Greenwich); whilst on the south side, it does not reach the line of the dukedom, but remains at the mouth of the Chiriquí Viejo (meridian $82^{\circ} 44'$). The difference between the advance and the backward movement is divided equally by the meridian of $82^{\circ} 9'$, which only differs by three minutes to the west from that corresponding to the line of the dukedom, counting the leagues at the rate of 20 to the degree. That is to say, that the advance is compensated by the retrogression.

Whatever may be the divisionary meridian of the dukedom, Costa Rica enters into the Bay of Almirante or Lagoon of Chiriquí: on its western side, if the leagues are counted at the rate of $17\frac{1}{2}$ to the degree; at its centre, if at the rate of 20; and on its eastern side, if at the rate of $26\frac{1}{2}$. In any event, there would always belong to Costa Rica all of that bay, with its coast and the Valiente Peninsula, under the mathematical demarcation of the dukedom, by being on the north of the square which encloses the parallel of $8^{\circ} 54'$ common to all the meridians determined by different lengths of leagues.

Colombia, by presenting as a justifying title for her rights the Royal cédula of Carlos V of 1537, which

establishes the demarcation of the dukedom, proves her conformity with the boundaries of the latter, which are mathematical and refer concretely to geographical points and distances, and therefore offer the assurance of not going astray in the cognizance of the localities and the estimation of the facts that are connected therewith.

Costa Rica has demonstrated that this Dukedom of Veragua was converted into the Province of Veragua, and even when for this reason it would seem that she ought to have claimed as the divisionary line that of the dukedom, she did not do so, but confined herself strictly to the *legal and historical reality* that, from the time of Artieda (1573) to the independence (1821), was the line she has asked for, that reality having been the one recognized by the *Recopilación de Indias* and the principle of the *colonial uti possidetis*.

By accepting the straight line of the dukedom, Costa Rica would lose, on the north, the territory in which Artieda founded the city bearing his name and almost the whole of the Valleys of Guaymí, of which he took possession, as governor of the province, with perfect right recognized by the King. In exchange, Costa Rica would gain, on the south, the territory embraced between the Chiriquí Viejo river and the line of the dukedom, enlarging herself by the Valleys of Chiriquí, to which she also had a right by virtue of the Royal cédula of 1573.

Costa Rica could aspire to gain without losing, by claiming all the Valleys of Chiriquí under that Royal cédula, but she has not gone beyond the Chiriquí Viejo river, to follow the historic reality, for she considers that the Governors of Costa Rica abandoned the

valleys on the other side of that river to the intrusions of the Province of Veragua.

5. Final Deductions.

The following deductions are drawn from all that has been stated, concerning the general questions in which the case is synthetized:

1. That both of the Parties litigant are agreed in accepting as legal bases for the determination of this case the *Recopilación de Indias* and the principle of the colonial *uti possidetis*.

2. That Colombia has swallowed up the question of boundaries in that of territoriality, denying even the legal existence of the Province of Costa Rica, which was definitively constituted in 1573 and with the same territory that it kept when it was recognized by the *Recopilación* (1680) and when it was emancipated from Spain (1821).

3. That Costa Rica has fully proved that the boundaries which separated her from the old Province of Veragua, when it was emancipated, were the same which she possessed when her domain was marked out by the Royal cédula of 1573 and which were confirmed by the *Recopilación*.

4. That Colombia, by claiming an enormous part of the territory of Costa Rica, has not undertaken to prove the boundaries of the Province of Veragua with that of Costa Rica, but by invoking as the title of her right the Royal cédula of March 2, 1537, which established the boundaries of the Dukedom of Veragua, she recognizes the boundaries of that dukedom, which is the Province of Veragua.

5. That the whole case between Colombia, or Panama, and Costa Rica, reduces itself to the question whether there is to be fixed as the divisionary line that of the dukedom, as the said Royal cédula mathematically determines it, or the line claimed by Costa Rica, which is the one that she has held in fact and law from her administrative constitution as a Spanish province until her political organization as a sovereign State.

The undersigned counsel have the honor to submit the foregoing opinion in response to the questions proposed to them by the Government of the Republic of Costa Rica.

SEGISMUNDO MORET Y PRENDERGAST.
VICENTE SANTAMARIA DE PAREDES.

Madrid, August 31, 1911.



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